

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX
Volume I

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

206

FILED FEB 14 1966

NO. 19,692

Nathan J. Paulson
CLERK

OIL, CHEMICAL AND ATOMIC WORKERS INTER-
NATIONAL UNION, LOCAL 4-243, AFL-CIO,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

On Petition to Review and Set Aside an Order of the
National Labor Relations Board



I N D E X

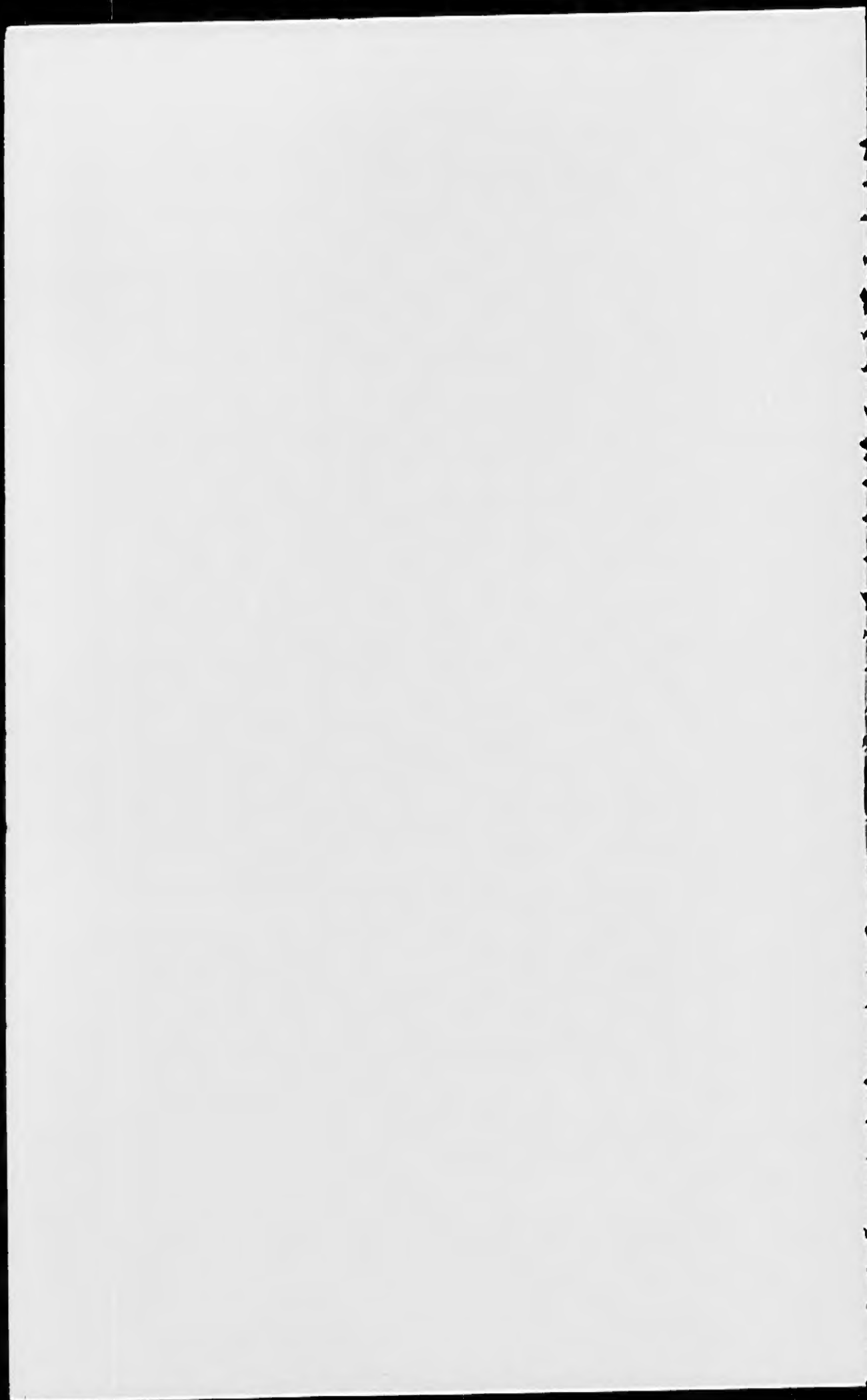
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153 NLRB No. 71

Houston, Texas

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

D-8116

UNION TEXAS PETROLEUM, A DIVISION OF
ALLIED CHEMICAL CORPORATION

and

Case No. 23-CA-1556

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION,
LOCAL 4-243, AFL-CIO

DECISION AND ORDER

On November 21, 1963, Trial Examiner Benjamin B. Lipton issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Respondent thereupon filed exceptions to the Trial Examiner's Decision and a brief in support thereof. The Charging Party filed cross-exceptions, a brief in support of the Trial Examiner's Decision, and a brief in answer to the Respondent's exceptions. The General Counsel submitted a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and cross-exceptions, the briefs, and the entire record in this case, and finds merit in certain of the exceptions of the Respondent. Accordingly, the Board¹ hereby adopts the findings, conclusions, and

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recommendations of the Trial Examiner only to the extent that they are consistent herewith.²

The record herein clearly demonstrates, and we find, that the Respondent intended at all times to take over the Winnie plant, purchased from Texas Gas Corporation, in a shut-down condition. The record further demonstrates, and we find, that Respondent planned to convert all the existing production areas from a gasoline refinery to a plant producing petro-chemicals.³ Although title to the plant passed to the Respondent on December 31, 1961, the plant was not actually shut down until February 14, 1962. It is evident from the record, however, that this passage of title was accomplished on December 31 solely as an ac-

¹ Member Brown concurs in the result herein.

² Respondent's motion for oral argument is denied. Further, we find without merit the Respondent's allegation of bias on the part of the Trial Examiner in his analysis of certain of the facts herein. There is no basis for finding that bias existed merely because the Trial Examiner resolved some of the important factual conflicts arising in this proceeding in favor of one side rather than the other. As the Supreme Court has stated: "... (T)otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." *N.L.R.B. v. Pittsburgh S. S. Company*, 337 U. S. 656, 659 (1949).

³ Seven million dollars had been budgeted by the Respondent for this substantial conversion.

comodation to Texas for purposes unrelated to the matter here under consideration.⁴

During the 6-week period between December 31 and the February 14 shut-down date, the Respondent assumed the responsibility for the cost of running the plant but engaged Texas to operate it on a cost plus a fixed fee basis. In our view, the record contains insufficient evidence to warrant a finding that, during this period, the relationship between the Respondent and Texas, under which Texas operated the plant, was one of joint or co-employers or one of agency, which would constitute Allied the employer of the Winnie employees and obligate it to bargain with the Union representing these employees.

Contrary to the Trial Examiner, we find that the Respondent's representative, Quinn, who was assigned to the Winnie plant during the December 31 - February 14 period, did not engage in such activities or possess such authority over the day-to-day operations of the plant as to warrant a finding that the

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Respondent was a joint or co-employer with Texas (or that Texas was the Respondent's agent). The record demonstrates that Quinn did no more than pass upon expenditures in excess of \$500, including items involving major repairs of existing equipment, all of which, if not scrutinized by the Respondent, might have resulted in waste when the conversion was undertaken.

Nor do we find that the Respondent's traffic manager, Herrington, directed the work of the rackmen and pumpers employed by Texas at the Winnie plant during this

⁴ The Respondent had not desired to take over the plant until sometime thereafter, inasmuch as its conversion plans would not be completed by December 31.

period. Herrington was employed at the Respondent's Houston sales office which had taken over Texas' sales functions, but which was completely divorced from the production and maintenance facilities at Winnie. (It has not been contended that the takeover of Texas' sales functions by the Respondent constitutes evidence with respect to the relationship of the two companies at the Winnie plant.) Herrington forwarded sales memoranda either in writing or orally to these employees. The memoranda contained information as to the number of the truck or tank car to be loaded; the scheduled arrival of barges; the type of product to be loaded on, or unloaded from, the truck, tank car, or barge; and the amount of the load. We find that these memoranda were no more than routine communications between a central traffic department and the department in a particular plant which is responsible for shipping and receiving.

The record demonstrates that the plant was shut down and that all of the production and maintenance employees were terminated prior to the Respondent's physical takeover of the premises, as had been originally planned by the parties to the sale of the plant. There was never any deviation from the intent of the Respondent to receive, and the intent of Texas to transfer, a shut-down plant. The type of work to be performed at the plant, the products, and the customers for these products, were to be different after the plant was shut down and converted. We find no evidence in the record to indicate that the shut down of the plant, or the lay off of the production and maintenance employees, was motivated by union animus on the part of the Respondent. Rather, we find that the parties to the sale consummated their bargain in the manner bargained for and with the legitimate business interests of both in mind.

Consequently, we find further that in these circumstances the Respondent

had no obligation to bargain with the Union with respect to Texas' employees.⁵ In this connection we note that Texas continued to bargain with the Union with respect to terms and conditions of employment of its employees, including severance pay, throughout the December 31 — February 14 period and thereafter, until all outstanding matters were agreed upon between the Union and Texas.

Accordingly, and unlike the Trial Examiner, we find that the Respondent has not violated Section 8(a)(3), (5), and (1) of the Act, and we shall order that the complaint be dismissed in its entirety.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated, Washington, D. C., June 29, 1965.

Frank W. McCulloch,	Chairman
Gerald A. Brown	Member
Howard Jenkins, Jr.,	Member

NATIONAL LABOR
RELATIONS BOARD

(SEAL)

⁵ Cf. *Chemrock Corp.*, 151 NLRB No. 111, where the purchaser of a plant had continued to produce the same products, had retained the same clientele, and had hired most of the former employees to perform the same work, but attempted to deal unilaterally with certain other, union represented, employees with respect to terms and conditions of their hire and employment. The Board held the latter to be employees of the purchaser and ordered the purchaser to bargain with the employees' representative.

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TRIAL EXAMINER'S DECISION

Statement of the Case

This proceeding involves allegations by the General Counsel of the National Labor Relations Board that the above-named company, herein called the Respondent, engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act.¹ A hearing was held before me in Houston, Texas, from June 25 through 28, 1963. All parties were represented and participated in the hearing, and were afforded full opportunity to examine and cross-examine witnesses, to argue orally on the record, and to file briefs. Respondent's motion to dismiss the complaint is disposed of in accordance with the findings below. Briefs received from all parties, including a reply brief from Respondent, have been duly considered.

Upon the entire record in the case,² and from my observation of the demeanor of the witnesses, I make the following:

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Findings of Fact

I. The business of the Respondent

Allied Chemical Corporation, herein called Allied Chemical, is a New York corporation engaged generally in the

¹ The original charge was filed on January 17 and served on January 18, 1963, and an amended charge was filed on March 8 and served on March 12, 1963. The employers named in the charges were Union Texas Petroleum, a Division of Allied Chemical Corporation; Texas Gas Corporation; Pan American Petroleum Corporation; and Carl M. Loeb Rhoades & Co. On April 23, 1963, the complaint was issued by the General Counsel, naming only the Respondent herein.

² An exhibit received from Respondent after the hearing is admitted as Respondent's Exhibit No. 62A.

production of chemicals and chemical products. Union Texas Petroleum, is a division of Allied Chemical engaged in the business of oil and gas exploration, development, processing and refining of petroleum energy products and petrochemicals, with facilities in several States of the United States, including Oklahoma, Texas and Louisiana. Union Texas Petroleum owns, operates and maintains a plant in Winnie, Texas, known as the Winnie Refinery, which is particularly involved in this proceeding. During the 12 months preceding issuance of the complaint, Respondent in the course of its operations at its Texas facilities had a direct outflow of products in interstate commerce valued in excess of \$50,000, and a direct inflow of materials valued in excess of \$50,000. Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

II. The labor organization involved

Oil, Chemical and Atomic Workers International Union, Local 4-243, AFL-CIO, herein called the Union, is a labor organization within the meaning of the Act.

III. The unfair labor practices

A. *Introduction and summary of events*³

The alleged unfair labor practices stem directly from Respondent's actions relating to its purchase, effective December 31, 1962,⁴ of the physical assets of the Winnie refinery and related facilities from Texas Gas Corporation, herein called Texas Gas, which in operating these facilities

³ The summary appears desirable for an initial understanding of the issues.

⁴ Unless otherwise specified, all dates in the months from October through December are in the year 1962, and those in the months from January through July are in the year 1963.

for many years had bargaining relations with the Union as certified representative of the production, operating and maintenance employees. The Union's current bargaining agreement with Texas Gas was expressly excluded from the terms of the sale. From January through February 14, under a separate "Operating Agreement;" Respondent retained Texas Gas as a contractor to operate most of the purchased facilities. On February 14, Respondent terminated the operating agreement; the facilities in substantial part were shut down, and the hourly paid employees, represented by unions, were terminated. Most other employees and supervisors of Texas Gas had been hired by Respondent. At least for a time after February 14, the Winnie refinery was run on a reduced scale by former Texas Gas supervisors together with a contingent of employees brought in by Respondent from its other plants. Beginning about February 26, Fluor Maintenance, Inc., herein called Fluor, entered upon the Winnie premises to perform all maintenance, repair and construction work, pursuant to an independent contract executed with Respondent. In March, Respondent invited employment applications from the former Texas Gas operating employees, but not from the maintenance employees.⁵ Early in June, with refinery

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operations resumed on a fuller scale, Respondent had a complement of 37 hourly paid employees, excluding em-

⁵ As stipulated, the Texas Gas payroll as of February 8 reflects employment of 87 hourly paid employees, including 14 maintenance employees,—constituting the bargaining unit of the Union. Also included on this payroll were 8 pipefitters and 5 electricians and instrumentmen, separately represented by craft unions. The complaint alleges discrimination as of February 14 against 72 named employees represented by the Union.

ployees in maintenance work. Of the 37 thus employed, 11 were former Texas Gas employees.

B. Contentions and issues

Concerning Section 8(a)(3), the complaint alleges, in substance, that Respondent was discriminatorily motivated in terminating or causing the termination on February 14 of 72 employees represented by the Union. The broad contentions are that Respondent's purpose underlying all its actions was to take over the Winnie plant without employing the existing hourly paid employees because of their union representation; that Respondent resorted to the device of the operating agreement in having Texas Gas, as a purported independent contractor, continue to run the plant for a period after January 1 until Respondent was ready in its own name to assume control with the personnel it desired; and that Respondent, by terminations and refusals to hire, effectively eradicated the Union's majority status at the plan. The General Counsel makes clear that this aspect of the complaint is rested upon grounds that Respondent acted to remove the Union-represented employees *as a group*, and does not allege separate cases of discrimination against any individual employees. At the same time, the General Counsel relies upon all the evidence, including Respondent's hiring procedures in testing and selecting applicants for staffing the Winnie plant, to establish Respondent's overall discriminatory motive.

Concerning Section 8(a)(5), the General Counsel's reasoning is that Respondent, as owner, actually exercised effective control over the Winnie operation during the period of the operating agreement from January 1 through February 14; that Texas Gas during this period was not an independent contractor but merely an agent of Re-

spondent; that Respondent was in legal effect a coemployer with Texas Gas; that Respondent was therefore obliged to bargain with the Union; and that, beginning on January 11, it refused to do so upon the Union's requests. Relying upon actual evidence of the Union's majority after January 1, the General Counsel makes no contention that Respondent is legally the successor of Texas Gas for the purpose of binding it to the Union's certification or the Union's current contract with Texas Gas.⁶ In separate counts, the complaint asserts that Respondent generally failed to bargain with the Union,—and that it engaged in specific violations by unilaterally effecting a partial shutdown of the Winnie refinery and causing the termination of specified hourly paid employees; by refusing to bargain with the Union concerning the effects upon these employees of the decision to shut down the Winnie refinery; by unilaterally subcontracting maintenance work out of the bargaining unit; and by failing to give prior notice to and consult with the Union concerning the decision to shut down the Winnie refinery and the decision to subcontract the maintenance work. As a remedy for the alleged Section 8(a)(5) violations, the General Counsel seeks, in addition to a bargaining order, the reinstatement and backpay for the specified hourly paid employees, in order to restore the situation to *status quo ante*.

Respondent defends essentially as follows: It had acquired the Winnie refinery for the purpose of converting the basic nature of the plant from production of energy products to that of petrochemicals. The operating agreement with Texas Gas functioning strictly as an indepen-

⁶ Cf., e.g., *N.L.R.B. v. Auto Ventshade, Inc.*, 276 F.2d 303 (C.A. 5), enfg. 123 NLRB 451; *N.L.R.B. v. McFarland & Hullinger*, 306 F.2d 219 (C.A. 10), enfg. 131 NLRB 745.

dent contractor, became necessary when Respondent found that its engineering plans were not sufficiently advanced to begin with the planned conversion of the plant after it took title on January 1. However, with the additional time until February 14, Respondent was prepared with its engineering designs, and it promptly terminated the independent contract and had Texas Gas deliver the refinery in a shut down condition. The conversion processes were then begun and have since

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proceeded as rapidly as possible. At no material time were the hourly paid employees represented by the Union legally employees of Respondent, and Respondent was therefore never under an obligation to bargain with the Union. Under the program for petrochemical conversion, Respondent subcontracted out all maintenance and new construction, which required a much larger number of craft employees than were employed in maintenance work on the Texas Gas; it required fewer but more skilled and versatile employees to operate the Winnie refinery; and it utilized surplus employees from its other plants to staff the operating functions at Winnie. On an equal and nondiscriminatory basis, Respondent examined and made selections to fill the available operating jobs from two groups of applicants: former Texas Gas employees; and surplus operating employees from its other plants. Respondent has no antiunion history or animus, and denies any discriminatory motive in connection with its conduct.

Respondent introduced in considerable volume testimony and exhibits, mainly of a technical character, to demonstrate the plans and progress made to convert the Winnie plant for production of petrochemicals. However, the Gen-

eral Counsel does not challenge the point that Respondent pursued plans to improve on the Texas Gas operations with a view to producing higher octane gas and recovering petrochemicals. The question remains whether Respondent was motivated to exclude from available jobs the hourly paid employees represented by the Union so as to avoid obligation to bargain with the Union.

C. Management personnel

Respondent—Union Texas Petroleum (15 plants)

J. Howard Marshall, President

Howard G. Teverbaugh, Vice President, Natural Gas Plants

John A. Sutherland, General Manager, Plant Operations

Douglas F. Pierce, Director of Administration for Petrochemicals

Clyde V. Quinn, Area Superintendent of Eastern Division

Elton Gotcher, Plant Manager of Winnie Plant as of February 15

Edwin Ekholm, Technical Director for Petrochemicals (hired December 18)

E. Paul Wilkenson, Director of Sales

In addition, those hired from Texas Gas, below:

Texas Gas Corporation

A. C. Gladden, Executive Vice President

Earl D. Elliott, Secretary and General Counsel

R. M. Woolfolk, Manufacturing Superintendent (hired by Respondent January 1)

R. T. Neville, General Superintendent (hired by Respondent February 14 and terminated May 15)

Charles Albritton, Plant Superintendent (hired by Respondent on February 14)

Jesse Cating, Personnel and Safety Director (hired by Respondent on February 14)

James C. Ellis, Maintenance-Construction Supervisor (hired by Respondent on February 14 and terminated on April 23)

M. F. Krueger, Operating Foreman (hired by Respondent February 14)

Walter T. Neidert, Chief Engineer (hired by Respondent February 14)

R. C. Herrington, Manager of Traffic (hired by Respondent January 1)

D. The pertinent evidence

(1) Preceding Respondent's ownership of plant

Commencing in 1949, after a Board of certification, the Union continuously represented in collective bargaining a unit of production, operating, and maintenance employees at the Winnie plant and the Port Neches

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terminal.⁷ Two other unions,⁸ not involved herein, represented respectively separate craft units of five electricians and eight pipefitters. In 1952, the Winnie facilities were sold by the original owner, McCarthy Chemical Company, to Texas Gas, which continued the same operations. A collective bargaining contract existed between Texas Gas and the Union with a term from September 16, 1961 to March 16, 1963. Separate contracts were also in effect

⁷ See *McCarthy Chemical Co.*, 86 NLRB 14: 98 NLRB 1084.

⁸ Local Union 479, International Brotherhood of Electrical Workers, AFL-CIO; and Local Union 195, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry AFL-CIO.

covering the craft electricians and pipefitters. The other employees of Texas Gas, e.g., truckdrivers, pipeline employees, and office employees were unrepresented.

In April 1962, Union Texas Natural Gas Corporation, which operated in various States 14 natural gas liquid plants and a number of marketing facilities, was acquired by Allied Chemical and became a division thereof under the name of the instant Respondent. None of the 14 plants involves basic refinery operations (as conducted at the Winnie plant in question), and none is engaged in the production of petrochemicals. There is no union representation at any of the 14 operating plants, although it was adduced that the Teamsters Union represents certain warehouse and shipping employees of Respondent in the Minneapolis-St. Paul area.

At the end of 1961, the *former* Union Texas began considering the acquisition of the Winnie facilities⁹ at the same time that it was contemplating construction of a petrochemical complex at Geismar, near Baton Rouge, Louisiana.¹⁰

In October 1962, after reviewing detailed studies and engineering plans which had been drawn up for the purpose, the board of directors of Allied Chemical adopted a resolution for the purchase of the Winnie facilities from Texas Gas. An extract of the certified minutes in evidence reflect, in substance, the following:

1. Its Union Texas division has been seeking entry into the natural gas market in Eastern Texas and has reviewed

⁹ The testimony of Respondent's President Marshall that it was Allied Chemical which then considered the purchase of Winnie is apparently inaccurate.

¹⁰ At the time of the hearing, June 1963, the Geismar project was still in the "planning and engineering stage."

the operations of Texas Gas Corporation which supplies 20-25 percent of the industrial gas sold in the area. Texas Gas and a wholly owned pipeline corporation own and operate a natural gas liquids plant and gasoline refinery at Winnie, Texas; a terminal at Port Neches;¹¹ and a gas collecting and distributing system within 400 miles of pipeline in the area. Gas liquids removed from natural gas are sold as LPG (propane), except for natural gasoline and concentrates, which are processed and sold as gasoline.

2. Its Union Texas division, as a major producer, with substantial natural gas reserves and no outlets in that area, is in a good position to strengthen participation in the growing markets now served by Texas Gas, and *could improve* on the latter's operations by producing higher octane gasoline and by recovering aromatic chemicals (i.e., petrochemicals)¹² for other

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Allied Chemical divisions. Acquisition of Texas Gas and its subsidiary is *particularly desirable* because it would provide an immediate entry into a growing market for locked in reserves of Union Texas.

¹¹ Located about 25 miles from, and having connecting pipelines with, the Winnie plant. It is elsewhere described as a deepwater terminal on a tract containing approximately 82 acres with a pertinent loading, dock, and storage facilities for 265,000 barrels.

¹² A "common definition" of a petrochemical, given in the record, is that it is a pure compound derived from petroleum, which is further processed into useful end products, e.g., plastics, synthetic fibers and rubber. From other testimony, it appears that an "energy product" of an oil refinery may be made into a "petrochemical" by a process of further refinement. The record is not clear as to the precise point of purity in which an energy product could be called a petrochemical.

3. Following acquisition of the assets of Texas Gas, *it would be proposed* to install facilities at an estimated cost of 6 million to produce aromatic chemicals (petrochemicals) and to upgrade gasoline, bringing the total investment to \$27 million. The portion of the \$6 million spent to produce aromatic chemicals at Winnie "would reduce expenditures of about twice that amount which would otherwise be spent for the same purpose at Geismar, Louisiana."

4. Pretax income of Texas Gas now approximates \$2.6 million on sales of \$27.5 million, and it is estimated by 1964, sales revenues will increase to approximately \$40 million, and that with increased efficiencies pretax income will be increased to \$5 million per year.

The foregoing authentically reveals the purposes of Allied Chemical in acquiring the Winnie facilities: *principally* to provide entry into the natural gas market in the Eastern Texas area; to obtain an existing profitable operation with an estimated substantial improvement in income by 1964; and to undertake improvement of the Winnie operation by producing higher octane gasoline and recovering petrochemicals.¹³

On December 5, Respondent and Texas Gas executed a "Purchase Agreement" under which Respondent would acquire the main physical and other assets of Texas Gas, excepting such assets as cash, accounts receivable, patents and trademarks.¹⁴ Respondent would assume specified liabilities of Texas Gas, including long-term indebtedness.

¹³ Cf. Respondent's Vice President Teverbaugh's testimony that the **primary** reason for which Respondent acquired the Winnie plant was to convert it for the production of petrochemicals.

¹⁴ For purposes of this case, I find no distinction, as Respondent appears to allege, between purchase of assets and purchase of the business.

However, expressly excluded from the terms of the purchase were the existing collective bargaining contracts and other agreements relating to employment and employee benefits. Closing of the purchase transaction was to be consummated on or before December 31. Certain provisions in the lengthy document may be noted, *viz.*:

1. "Respondent represents that it desires to purchase the physical facilities described . . . and to make modifications in said gasoline plant at Winnie, Texas, so as to cause said plant to be converted to a petrochemical plant which will primarily supply a source of raw materials for the chemical industry"¹⁵

2. "Texas Gas will give its employees affected hereby due and proper notice of the sale contemplated hereby and the termination of their employment unless Texas Gas wishes to retain such employees in other capacities."

Respondent's President Marshall testified that Respondent would have preferred to acquire the Winnie plant "around the first or the middle of February," 1963, but that Texas Gas insisted, for tax reasons, on consummating the sale by the end of 1962. He also stated that as of December 5, the date

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of the purchase agreement, and anticipating a closing of the transaction by the year end, Respondent had hoped to begin its "change-over" or conversion operation by the first or middle of February.

¹⁵ This passage does not seem to have any essential purpose as part of the purchase agreement. It appears to be a gratuitous statement of a conclusion. Probative evidence of the reasons for the Winnie acquisition is contained in the October 1962 minutes of the Allied Chemical board of directors, *supra*.

Secretary and General Counsel Elliott of Texas Gas credibly testified that, probably at the end of the first week in December, Executive Vice President Gladden of his company gave him a draft of the "operating agreement" to evaluate from a legal standpoint. Thereafter, on several occasions, he negotiated changes in the draft with the Respondent's officials, primarily with Administration Director Pierce. On December 21, one of his last discussions with Pierce took place, without reaching final agreement. On December 22, at a meeting attended by several Texas Gas officials,¹⁶ Elliott notified the three unions at the plant, *inter alia*, that an operating agreement was being negotiated and they would be advised when the agreement was final; and that it was the intention of Texas Gas to perform this service of operating the plant for Respondent "for some period of time."¹⁷ By December 28, the operating agreement (as will be described below) was fully negotiated, and it was executed on that date.¹⁸

¹⁶ Gladden, General Superintendent, Neville, Plant Superintendent Albritton, Personnel Director Cating, and Attorney Karl Mueller.

¹⁷ Elliott also advised the unions that the purchase contract was entered into on December 5; that Texas Gas would abide by its contract obligations with the unions during the period of the operating agreement; and that if title passed to Respondent, as expected, Texas Gas would negotiate with the employees matters relating to severance of employment.

¹⁸ The testimony is conflicting as to when Respondent first considered and began negotiating the operating agreement with Texas Gas. Elliott's version appears the more plausible in light of other evidence, and particularly as he negotiated the agreement and testified in some detail concerning the matter. Gladden was not called and Pierce was not questioned on the point. Respondent's President Marshall firmly testified that Respondent gave first consideration to the necessity for the operating agreement and started negotiations in the week following Christmas. Ekholm, hired as Respondent's technical director on December 18, had previous to his employment been away in Europe and out of touch with Respondent. He testified that, immediately upon his being hired, he began a

Previously, on December 26, Texas Gas had filed with the Secretary of State of Texas formal notice of an intent to dissolve the corporation. The Certificate of Dissolution Intent duly recorded by the State of Texas shows, among other things, a resolution of the board of directors of

study of the status of Respondent's engineering plans for Winnie and delivered his oral report thereon to President Marshall during the Christmas week. The opinion he rendered was that Respondent had misconstrued the extent to which engineering was available for immediate use in the field, that it was not ready to undertake heavy field construction work at that time, and that such work would have to be postponed. (It may be noted here that Respondent had not begun heavy field construction work at Winnie at the time of the hearing in June 1963.) Earlier, in a memorandum dated December 4, Respondent's engineering staff had projected a shut-down of the Winnie plant and a takeover by Respondent as of December 28. The record shows that a good deal of preliminary work was necessary before field construction work could begin, and that even the initial engineering plans prepared for Respondent in the December 4 memorandum projected the earliest date for beginning construction work as about July 12, 1963. I do not believe Ekholm's advice to Respondent "after a quick survey" was instrumental, as Respondent argues, in causing Respondent to seek the operating agreement with Texas Gas. As shown by Elliott's testimony, Respondent had decided at least early in December to have the operating agreement. It is reasonably inferable that other reasons impelled this decision. The December projections of the engineering staff concerning the plant takeover were based upon limited information of a technical character; but the decisions were necessarily made at the top, giving effect to other considerations, such as preparedness for staffing the Winnie plant and negotiations with Fluor for subcontracting the maintenance work. Respondent's Vice President Teverbaugh testified that the decision to enter into the operating agreement was made only after Respondent had received Ekholm's advice. He insisted that Elliott (Respondent's witness) was in error, and that the first draft of the operating agreement was not prepared until December 18 or 19. Teverbaugh's testimony appears to conflict not only with that of Marshall but with that of Ekholm, who first came on the job December 18, unprepared, and did not give his report on the status of the engineering until after December 25.

Texas Gas, dated November 20, 1962, to dissolve the company pursuant to a detailed plan set forth, and to sell and dispose of the assets within a period of not more than 12 months.

On December 28, as above noted, a document entitled "Operating Agreement" was signed by Respondent and Texas Gas, to be effective after 11:59 p.m. on December 31. It included the provisions, in substance:

1. Texas Gas "agrees to operate the Properties as an independent contractor, subject to the terms and conditions . . . set forth."

2. The "Properties" consist of the gasoline plant at Winnie, Texas, and the deepwater terminal at Port Neches, with all component parts thereof, including adjoining houses, dock and storage facilities, machinery, equipment, materials and supplies pertinent to or useful to the operation of said plant and terminal; and all physical properties constituting the transportation and gathering systems of the pipeline operation, including all component parts thereof.

3. Texas Gas shall, *as requested by Respondent by prior instructions*, operate, maintain, repair, and renovate the Properties, and perform such other work or services requested in writing by Respondent to operate and keep said properties *in a condition satisfactory to the Respondent*. Such work shall include but not be limited to routine operation and maintenance, emergency work, janitorial services, turnaround work and other miscellaneous services for plant pipeline and terminal operations and maintenance; and Texas Gas shall perform such supplemental services as equipment inspections, *as may be requested by Respondent from time to time*.

4. Texas Gas shall supply all personnel required properly to perform the work described, but not in excess of the number now employed, except on written authority of Respondent. Texas Gas is not permitted to subcontract or assign any part of the contract to any other person without written consent of Respondent.

5. Respondent shall furnish all equipment, materials, supplies, small tools, and major and minor items of construction equipment, except small tools and equipment at a cost not to exceed \$500 which Texas Gas may acquire for Respondent's account, and items needed in emergency situations.

6. In compensation, Texas Gas was to be reimbursed for its payroll costs and general expenses, plus a monthly fee of \$7,500. *To be reimbursable, any other cost incurred by Texas Gas shall first be approved in writing by Respondent.*

7. The agreement was to remain in effect until April 1, 1963, unless earlier terminated by either party on 15 days' advance written notice.

8. Texas Gas agrees that on termination of the operating agreement it will terminate the employment of its employees with due and proper notice.

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On December 31, in accordance with the terms of the purchase agreement of December 5, closing of the purchase transaction took place and title passed to Respondent.¹⁹

¹⁹ Marshall's testimony that it was quite uncertain until almost the morning of December 31 whether the purchase agreement would be consummated is patently in conflict with all other evidence, e.g., Respondent's plans, commitments, the purchase agreement, the operating agreement, and the filing for dissolution by Texas Gas prior to December 31.

(2) Period of operating agreement from
January 1 to February 14

On January 1, at the inception of its formal ownership, Respondent assumed the direction of the Winnie operations, with the exception of the natural gas pipeline system and the plant refinery, and marketed all products under Respondent's name and trademark. It promptly hired from Texas Gas—Woolfolk, manufacturing superintendent, and Herrington, manager of traffic. And it transferred to its payroll the bulk of the accounting, legal, office, and sales staffs at the Houston office, and the traffic department at the Winnie plant, including truckdrivers. These employees hired were not represented by any union. The Winnie plant continued to produce essentially the same products with the same complement of employees.

By letter dated December 31, Respondent informed Executive Vice President Gladden of Texas Gas with respect to the operating agreement, *inter alia*, that "hourly paid employees will not exceed in number in each job classification those now employed by you"; that "salaries and wage rates are not to exceed those paid by Texas Gas Corporation on December 15, 1962"; that bills of sale for certain purchases by Texas Gas should be submitted to Respondent's official representative; and that Respondent designated Clyde V. Quinn as its official representative at the gasoline plant, pipeline and terminal facilities.²⁰

²⁰ Respondent's letter was not answered by Gladden until January 31, a month later. Gladden's letter stated that Respondent's communication was received on January 22. I do not accept this statement as fact, particularly as Respondent made no attempt to explain the obviously unreasonable lapse from the actual date of its letter. Gladden's letter further stated, among other things, that his "understanding of the contract required only that you notify us in writing whom you are going to designate as your company's

On January 1, Gladden informed General Superintendent Neville that Quinn would be at the plant as Respondent's representative, in charge of any repair for which money had to be spent; that nothing was to be done without first checking with Quinn; that anything other than normal maintenance,²¹—any repair work, new equipment or overhaul—would have to be cleared by

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Quinn; to check with Quinn on everything to be done,—on products, or desire to make any change,—and to do whatever Quinn said about it. Also, Neville was told that payment of vouchers would be approved by Quinn, or in his absence by Gotcher.²² At that time, Neville was not aware of the contents of the operating agreement, and at no time had been given a copy of that contract. On January 1, Quinn set up an office at the Winnie plant; and until February 14, he was at the plant a majority of the time, with Gotcher available in his absence. Thereafter, Quinn "more or less took over," was consulted by Neville as the man in charge for the owner of the plant,

official representative." (There is no such provision in the operating agreement.) Gladden pointed out that the contract does not contain a limitation relative to wage increases and therefore Texas Gas could not agree that salaries and wage rates will not exceed those paid on December 15. Note has been made of the month's delay in the reply of Texas Gas, and its attempt to cover up the delay. If, as it later stated, Texas Gas disagreed with Respondent's interpretation of the contract, it would have sought an immediate clarification in order to carry out its functions as contractor. In the circumstances, it is inferable that the prompting cause of the late reply lay in the interim developments of the Union filing the charge herein and the Union attempting to bargain with Texas Gas for a 5 percent pattern wage increase, *infra*.

²¹ Defined as "light repairs."

²² Gotcher, brought in from another plant of Respondent, became plant manager at Winnie after February 14.

and gave orders to Neville, as well as to Operating Foreman Krueger, Personnel Director Cating, and Maintenance-Construction Supervisor Ellis. Any money spent had to be approved by Quinn or Gotcher.

From January 1 to February 14, full responsibility on behalf of Texas Gas for supervising the Winnie plant was left to Neville, subject to Gladden's initial instruction concerning Quinn's authority.²³ Theretofore, Manufacturing Superintendent Woolfolk had, on a regular weekly basis, held staff meetings concerning plant problems and conducted inspection tours of the plant. After January 1, this function and supervision over the plant's operations was not assumed by any Texas Gas official superior to Neville, and no service was performed concerning the conduct of operations at the plant from the Houston office of Texas Gas.

Specific instances of Quinn's exercise of authority over operations and personnel were described in evidence. Thus, for example, on January 11, Neville called together the staff to meet with Quinn to obtain his clearance to perform a variety of repair work which the staff desired to have done. Quinn approved certain of the repairs and advised that the remainder be held up. Neville complied with these instructions.²⁴

²³ However, Neville "briefed" Gladden on the status of operations when Gladden could be reached by telephone in the morning, but Gladden issued no orders other than the basic instructions of January 1.

²⁴ Based upon the credible testimony of Neville, as corroborated in part by Ellis and by documentary evidence. Neville, as general superintendent, was high in the management of Texas Gas and a key witness. His demeanor and composure on the stand lent conviction to his testimony. Respondent, while attacking Neville's veracity, did not offer refutation to much of his specific testimony. Gladden, Cating, Woolfolk, Krueger, nor Plant Superintendent Al-

During the period of the operating agreement, it is indisputable that Respondent directed the work of 10 rackmen at the Winnie refinery and 4 terminal pumpers at Port Neches, all of whom were in the Texas Gas bargaining unit represented by the Union. Thus, Traffic Manager Herrington, after he was hired by Respondent on January 1, regularly gave orders to the rackmen and pumpers for the loading and unloading of tank cars, trucks and barges, and

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issued other instructions relating to the handling of shipments in and out of Winnie. The rackmen were also given orders by Respondent's sales staff at the Houston office.

On February 11, Respondent terminated the operating agreement insofar as it covered functions of Texas Gas regarding the natural gas pipeline system, and immediately took into its employ most, if not all, of the personnel in the pipeline operation.²⁵

Quinn was called to testify. Quinn testified generally that his only duties at Winnie concerned the spending of money and approval of bills before payment, that his job was to observe but to have nothing to do with the operation or with the direction of the work force. Respondent's General Manager Sutherland testified that Quinn was instructed that his sole responsibility at the Winnie plant was to observe the operations and report to him, Sutherland; at the same time he was to approve cash expenditures, as he did regarding other plants of Respondent. It is significant, however, that Quinn was no mere observer but held the post of area superintendent of Respondent's eastern division, and further unlike the situation at Winnie, there was no contractor operating the other plants under Quinn's purview. To the extent of conflict with the findings above, the testimony of Quinn and Sutherland is not credited.

²⁵ As of February 8, there were 31 hourly paid employees, 7 office clericals, and 12 supervisors in the "Pipeline Department."

On February 14, effective at 4 p.m., the remainder of the operating agreement was terminated by Respondent. Significant events which occurred prior to 4 p.m. on February 14 are covered in the section immediately below.

(3) The shutdown and terminations
on February 14

On February 14, at 6 a.m., Woolfolk telephoned Neville at his home with instructions to summon all supervisory personnel, engineers and office employees to Neville's office at the plant for a meeting at 8 a.m., and to have all maintenance employees stand by in the shops and not begin any work until further notice. About 8 a.m., Texas Gas was notified by hand-delivered letter from Respondent that the operating agreement and its services as "independent contractor" were terminated effective with the end of the day shift at 4 p.m., that day. Texas Gas, so far as appears, had received no prior notice of the termination.²⁶

At 8 a.m., as arranged, the meeting took place in Neville's office, conducted by Sutherland and Woolfolk. Sutherland announced that the plant would be shut down that day, and that all those present (and presumably others in like jobs) would be placed on Respondent's payroll²⁷ as of 4 p.m. at their same positions and salaries.²⁸ Maintenance

²⁶ Thereafter, it was agreed that Texas Gas would be paid its fees for 15 days following February 14, in view of Respondent's failure to give Texas Gas the 15-day advance written notice provided in the operating agreement.

²⁷ Including five office employees who worked at the Winnie plant. Office clericals at the Houston office had been hired on January 1, *supra*.

²⁸ Sutherland testified that he specifically indicated that the employment of these people would be temporary and that individual interviews would be given in the next 30 days regarding the possi-

employees were to be sent home immediately and would be paid for the day. Woolfolk told Personnel Director Cating to assist Ellis in getting these employees out of the plant. Instructions were given, particularly by Woolfolk, as to the manner of shutting down. An "ordinary" type shutdown was to be accomplished, without depressurizing and draining the equipment.²⁹ Each unit was to be closed down separately,

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following which the particular operators of the unit would be promptly sent from the plant. Portions of the operations were to be left in service, e.g., the No. 1 engine room, one boiler, the compressor room, and the loading rack. Operating Foreman Krueger was instructed to put the shift foremen on a schedule of two 12-hour shifts; they were not to touch any of the equipment until the rank-and-file employees left the plant. Asked whether the hourly paid employees would have a chance to resume employment, Sutherland said there would be no employment office at the plant at that time, and Respondent "probably would restaff the plant with Union Texas personnel." He also stated that the employees may be given letters of recommendation if they asked for them.

bility of permanent employment with Respondent. There is no further evidence whether such interviews were conducted, or whether any of those hired on February 14 were not retained on a permanent basis as a result of such interviews. No corroborating witnesses were produced. This testimony of Sutherland is not credited.

²⁹ The type of shutdown which was ordered required about 5 hours, and would take about 8 hours to restore to full operation. If the vessels had to be drained and depressurized, however, the procedure would have required 48 hours to shut down and a like period to restore. Normally, draining and depressurizing are necessary in order to perform repairs on a particular unit.

Pursuant to the instructions at the meeting,³⁰ the partial shutdown of the Winnie refinery and Port Neches terminal was carried out. By 2 p.m., all hourly paid employees were out of the plant, and their employment permanently severed effective at 4 p.m.³¹ They were not given the "due and proper notice" of termination as provided for in the operating agreement.³²

Under instructions from Sutherland, during the day on February 14, no telephone calls were permitted into or out of the plant except on Quinn's approval; the guards³³ stationed at the plant entrances were ordered not to allow anyone into the plant; and the terminated employees were not permitted to reenter the plant to obtain their personal property, which was later arranged to be taken out to them.³⁴

³⁰ Sutherland testified that he made it clear at the February 14 meeting that he and Woolfolk were not giving any orders but were acting merely in an "advisory" capacity. Not only is this testimony uncorroborated by any of the large number of persons who attended the meeting and were available to Respondent, but it is patently refuted by the entire course of events on February 14, as testified in detail by Neville and Ellis. Moreover, in the manner the meeting was handled, even the "advice" of Sutherland and Woolfolk would take on the force of an order, especially after they had first announced the hiring by Respondent of all those present. I am convinced that Sutherland was shaping his testimony in accordance with his judgment on the legal issues at stake in a deliberate effort to relieve Respondent of responsibility for its actions taken before 4 p.m. on February 14.

³¹ The average tenure of these employees at the plant and terminal was in excess of 10 years.

³² Texas Gas ultimately agreed to and did pay the employees 1 week's terminal pay in lieu of notice.

³³ Four additional guards were brought in by Respondent.

³⁴ I reject Sutherland's testimony that these measures were taken to prevent any false information concerning the shutdown to escape from the plant, and because Respondent "very shortly" expected employees of Fluor to be arriving at the plant. (The first

The Winnie plant supervision had no previous indication of a planned shutdown. Prior to February 14, in the knowledge of Neville and Ellis, there had been no preparation at the plant for new construction or any extensive overhaul.

Concerning the reasons for the shutdown on February 14, Respondent's President Marshall testified³⁵ that Respondent had gotten far enough with

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its engineering and projections for converting the plant to a petrochemical operation that it was ready to begin the initial steps; that negotiations with Fluor had progressed sufficiently for Respondent to proceed with its plans; and that Respondent wanted to start with the petrochemical conversion "just as quickly" as it could, essentially to cut off an unprofitable operation.³⁶

After the shutdown and departure of the hourly paid employees on February 14, the shift foremen and other supervisors, working 12-hour shifts, undertook the functions of operating the plant units which remained in service. Maintenance work was also performed by super-

small contingent from Fluor did not appear at the plant until February 26.) He did not state as a reason the fact that personnel from other plants of Respondent would be arriving at the plant that day to take over many of the jobs vacated.

³⁵ Area Engineer Neidert was not consulted about the decision to shut down at this time; nor is there any showing that in this instance Technical Director Ekholm was consulted.

³⁶ Marshall explained that the Winnie plant had not made money for some years and was carried basically by the natural gaslines. Such information is not reflected in the comprehensive analysis of the Winnie facilities before the Allied Chemical board of directors in October 1962, as described *supra*, which indicates rather that Texas Gas was engaged in substantially profitable operations.

visors, at least until the Fluor personnel began arriving the latter part of February. In the evening of February 14, about 14 employees from Respondent's other plants reported at Winnie. These new arrivals were placed in training to work with the supervisors:³⁷ 4 were referred to the Port Neches terminal, where operations were resumed, and the remainder assigned to operate the functioning plant equipment. After about 10 days, the 12-hour shifts of the supervisors were abandoned; however, it does not appear when, if at all, these supervisors ceased to perform former rank-and-file duties. There is no evidence that the 14 new employees³⁸ were thereafter relieved from duty at the Winnie plant.³⁹

(4) Events after February 14

On February 15 and 16, additional employees came in from Respondent's other plants. Including those on February 14, a total of about 40-50 outside employees of Respondent had been brought to the Winnie plant. They had come from Respondent's plants in West Texas and Louisi-

³⁷ Plant Superintendent Albritton was made training director and instructed to set up a training program for the Respondent's employees coming in from other plants.

³⁸ Sutherland testified that at a later time (from March until June) he began the process of employing operators for the Winnie plant—"other than the ten men that he kept there."

³⁹ Note is taken of the staff memorandum to Respondent, dated December 4, *supra*, which contains the report that "As a result of the strike at the Winnie Plant [under Texas Gas in 1961] and subsequent operations with a minimum work force (supervisory personnel only) several detailed staffing studies were made. These are presently being summarized and will be forwarded to Mr. Sutherland when completed." Neville testified that the only other occasion for the use of foremen in 12-hour shifts and of pullman cars at the plant (see *infra*) was during the 1961 strike.

ana, carrying substantial amounts of luggage and personal equipment, and were housed mainly in two pullman cars which Respondent had delivered to a siding at the plant.⁴⁰ However, at about noon on February 17 (Sunday), Respondent suddenly altered its plans

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and issued orders that the additional employees who had come in after February 14 be sent back to Respondent's plants from which they originated. Sutherland explained to Neville that "it was a mix-up . . . somebody jumped the gun and got them in too early, so they were sending them out. They might get into trouble by having the men there so early."⁴¹

Sutherland testified as follows: It was originally planned in December to staff the Winnie plant, to be taken over in a completely shutdown condition, with about 35 of its own operators, who were available as a surplus from each

⁴⁰ Ellis estimated the total number of arrivals as between 40 and 50. Neville, the general superintendent, testified that a separate group of 14 arrived on February 14 (which they clearly did and were promptly assigned to work), and that 50-35 additional people came in during the next 2 days. Sutherland appeared to fix the total number in terms of 35 operating employees. He stated, however, that it was after the shutdown on February 14 that he sent word for the 35 men to report to the plant. In any case, under Sutherland's version, there were at least an additional 4 consisting of the pumpers at Port Neches. Neidert, for Respondent, briefly offered that there were as many as 30-35 new arrivals at the plant at one time. No documentary evidence was introduced on the point. Much of the testimony referred to "people" who arrived, and the difference between the minimum Sutherland total of 39 and the minimum Neville total of 49 may conceivably be reconciled by the number of salaried personnel, e.g., inspectors and engineers, who came at the same time as the employees.

⁴¹ Undenied by Sutherland.

one of Respondent's 14 plants throughout the country.⁴² Proceeding with this plan, on February 14, after the partial shutdown was accomplished, Sutherland sent for the 35 men to report to the Winnie plant. On Sunday, February 17, a further evaluation was made by Respondent of the status of the engineering work, and a decision was reached to move into a "full and extended shutdown of the Winnie facilities." Thereupon, Sutherland decided to reduce the group to a skeleton force sufficient to operate only the boiler, loading rack, and the compression and dehydration facilities. He sent the remainder of the 35 operating employees back to their home plants, keeping at Winnie the 10 "senior" operators.⁴³ On cross-examination, Sutherland denied that it was Respondent's intention to use the 35 men to operate the plant. He firmly stated that they were brought in only to *shut down* the plant.⁴⁴ On this latter statement, Sutherland is quite effectively contradicted.⁴⁵

⁴² Except for one plant in Montana, all operating plants appear to be located in Texas and Louisiana. Respondent's Oklahoma facilities were not described. Sutherland stated that the total number of hourly paid employees at the 14 plants as of the hearing date was 215, ranging from 10 to 40 at each plant,—and as of January 1, there were an additional 20.

⁴³ Sutherland failed to mention the four new arrivals who continued to be employed as pumpers at the Port Neches terminal.

⁴⁴ At this point Sutherland testified that the 35 men were at Winnie to fight fires, drain the equipment to avoid a freeze-up because of weather conditions, or do "anything else that was necessary while maintaining the delivery of gas to our pipeline customers."

⁴⁵ E.g.: Quinn testified he was told by Sutherland that the 35 employees were to be used as "operating personnel." Neidert, Respondent's area engineer, testified that he "heard around the plant" that these people were "brought in for training to be operators for the plant." Neville testified that Sutherland and Quinn informed him that the purpose of these new employees was to operate the plant.

Dated February 20, but executed some time thereafter, Respondent's maintenance contract with Fluor was entered into for a period of 1 year, unless earlier terminated by Respondent on 30 days' notice.⁴⁶ Generally, described, the contract covered Respondent's "plant facilities," including the pipelines, and provided for "routine maintenance, emergency work, janitorial services, turnaround work and other miscellaneous services for plant maintenance." Compensation was on the basis of reimbursement of costs plus fixed fees. Fluor executed a labor contract, dated February 20, with various international craft unions. On February 26, the first workers of Fluor came to the

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plant. There were 10 such workers in the first week, and thereafter the number averaged about 70. Fluor hired 10 of the pipefitters and electricians formerly employed at Winnie but *none* of the maintenance employees represented by the Union. Maintenance-Construction Supervisor Ellis⁴⁷ testified that, until his employment ceased on April 23, practically all work done by Fluor was "rou-

⁴⁶ Negotiations with Fluor antedated December 1962, as reflected in the staff memorandum to Respondent dated December 4 referring to the "Pace Work." On February 6, Respondent wrote to Elmo Pace of Fluor that it accepted, subject to certain conditions, Fluor's "Proposal" of December 10, as amended in later discussions. One of the conditions was that there be a "mutually satisfactory basis for obtaining the necessary labor" for the job. The letter requested advice as to when Fluor would execute "the labor agreement" and would then be ready "to activate this project."

⁴⁷ Ellis' job after February 14 was to assist Cating, former personnel director, in overall supervision of maintenance, and representing Respondent in coordinating the work of Fluor. Cating was not called.

tine maintenance," not involving new construction,⁴⁸ and work of the type and skill which had normally been performed by the Texas Gas maintenance department. Area Engineer Neidert stated essentially that the only difference in the maintenance functions after February 14 was in the greater size of the crew and quantity of work.⁴⁹

After February 14, for a time, the plant stopped making certain refinery products, e.g., gasoline, kerosene, and butanes, but continued such processes as removing condensates from the natural gas which was pumped into the sales pipelines. However, all these products, taken from storage, were continued to be shipped to the customers, and to supplement its inventory, Respondent itself purchased gasoline and trucked it into the plant.

At no time was the plant completely shut down Beginning about March 14, solely for the purpose of inspecting the condition of equipment, e.g., reboilers and condensers, certain units were individually drained and depressurized,⁵⁰ and where defects were found, the unit remained shut down until repaired.⁵¹ Neidert testified

⁴⁸ Ellis indicated that when he left the plant on April 23 there was no work underway for petrochemical conversion to his knowledge, except that one particular unit was "pending."

⁴⁹ Prior to February 14, when emergency maintenance or overhaul work exceeded the capacity of the regular crew, the excess work was regularly subcontracted out.

⁵⁰ Engineer Neidert's clear, detailed testimony. In view of the evidence of what was involved in draining and depressurizing, Neville's brief indication that it was begun on February 15 is found to be in error.

⁵¹ This was apparently the equivalent of the "turnaround" process, which was set up under Texas Gas on a routine basis by the engineering department. "Turnaround" was performed by taking a unit out of operation by draining and depressurizing in order to conduct a thorough inspection for any deterioration or corrosion.

that Respondent did not originally anticipate that a total shutdown of such equipment would be necessary after February 14.

A summary of maintenance expenditures under Fluor from February through June 3 indicates that of about \$240,000 expended for materials *and* labor, only \$25,300 represented *preliminary* expenses for petrochemical conversion. And "Capital Expenditures" in the sum of \$333,000, completed or nearing completion during this period, are evidently the costs of repairing defective equipment and installing automated controls, and are not identified as relating to petrochemical conversion. Neidert's testimony establishes that the bulk of the work done by Respondent during this time would likely have been done by Texas Gas, with no design for petrochemical changes.⁵² Texas Gas had been pursuing an expansion program of its own from October 1961, which in some features were parallel to the program being put into effect by Respondent.⁵³

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Respondent projects that its entire program for petrochemical conversion will be completed by February 1964. Although by far the greater amount of construction work and capital expenditure is planned for this coming period (subsequent to the hearing date on June 28), there

⁵² With regard to the planned upgrading of the gasoline produced, Ekholm indicated that there had been virtually no change made from September 1962 until the time of the hearing.

⁵³ In addition, a document in evidence, dated November 1962, which is a prepared forecast by Texas Gas of maintenance and operating expenditures for 1963, encompasses many of the projects which Respondent described as having been done or planned for the future.

is admittedly no contemplation of any further shutdown for installation of equipment.

On June 3, Respondent started to bring various units "on stream," but not in full operation. As of the hearing date, there were 33 hourly personnel at the plant and 4 pumpers at the Port Neches terminal. The products being produced in June, and theretofore, were basically the same as those produced by Texas Gas. It was estimated that the first petrochemicals wholly produced in the plant will not be forthcoming until the final quarter of 1963.⁵⁴

(5) Respondent's hiring procedures
the mental tests

On February 22, Respondent sent a letter to the terminated employees (represented by the Union) inviting them to write for employment applications. The letter stated, *inter alia*, that with the modifications planned, Respondent expected to have substantially fewer jobs when the plant reopened than were available under Texas Gas; that it planned to give consideration to employees at Respondent's other plants, but also wanted to consider the former Texas Gas employees; and that interviewing for this purpose would begin shortly after April 1. All but four of the recipients of this initial letter replied, seeking employment. Respondent then forwarded employment ap-

⁵⁴ Wilkinson, Respondent's director of sales, estimated that, when Respondent's conversion program is completed, about 65 percent of the total output will be in petrochemicals. He testified that under Texas Gas (and presumably until the hearing dates in June), 88 percent of the production was in "energy products," so that under his definitions about 12 percent was in petrochemicals. By contrast, Respondent's engineer witnesses, Neidert and Ekholm, testified that no petrochemicals were produced by Texas Gas or as yet by Respondent. And President Marshall, in apparent conflict, testified that in part the plant was now (in June) converted to petrochemicals.

plication forms. Those in the maintenance department when terminated on February 14 were given no consideration even if, as in the case of some, they also had experience with Texas Gas in full-time operating jobs; (some were also regularly used as relief operators). Thereafter, Respondent sent letters to employees acknowledging receipt of their employment applications and arranging appointments for "interviews" in April—"assuming that you are still interested in the possibility of employment with us at our Winnie plant." Apparently as part of the interviewing procedure, the remaining applicants were required to take (1) the Wonderlic Personnel Test, purporting to test general knowledge, reasoning and mental ability; (2) the Miller Mechanical Insight Test, i.e., aptitude tests; and (3) the Humm-Wadsworth Temperament Scale, a "personality measure."⁵⁵ By letter dated May 6, Respondent indicated an offer of employment to certain applicants, subject to their passing a "routine pre-employment physical."

The mental tests were given, during approximately the same period, to two groups of "applicants," i.e., the former Texas Gas employees, who were tested at the Winnie plant; and Respondent's employees from other plants, who were tested at one plant in Abilene, Texas, and another in Louisiana.⁵⁶

⁵⁵ The content and results of the Humm-Wadsworth test were not made available as evidence for the stated reason by Respondent that there was a commitment with the owner of the test to keep it confidential.

⁵⁶ Sutherland for Respondent and William C. Ford (Ph.D.) of Psychological Service Institute had earlier discussions, prior to March 14, concerning the purpose of the tests, and by agreement between them set the minimum standards for passing. The tests were conducted and scored by a staff member of the Institute, but testimony for Respondent with respect thereto was given by Ford.

None of the other Texas Gas personnel hired by Respondent were given these tests. In a letter dated April 12, Ford of the Psychological Service Institute, reported to Sutherland on the test results. Of 56 Texas Gas hourly employees who took the tests, 22 passed and 34 failed. Of 35 "applicants" from Respondent's other plants, 21 passed and 14 failed. As to the 14 who failed, Ford's recommendation that they be retained in their older assignments was ostensibly followed by Respondent. There is no evidence that the 35 employees of Respondent who took the tests were from the same group of 40 to 50 brought in to the Winnie plant from February 14 to 17, or included the 14 employees who continued on or after February 17.⁵⁷

Respondent has argued, without evidence, that operation of a petro-chemical plant requires a higher degree of versatility and natural talent, and in recognition thereof the mental tests were given. However, Respondent's Vice President Teverbaugh acknowledged that the tests were conducted principally as a basis for making selections as between the two classes of "applicants" for the jobs available. Moreover, the evidence does not support the facile assertion of Respondent that higher skills and greater versatility were required—at least beyond those already possessed by the experienced Texas Gas operating employees. Indeed, as noted, a training program to operate the ex-

⁵⁷ Sutherland had testified that the operating employees who came to Winnie beginning February 14 were culled from each of the 14 other plants of Respondent around the country. Credible testimony shows that these employees actually came from West Texas and Louisiana. Indeed, the tests for the entire group were given at two plants at the latter locations.

isting equipment had to be set up for the employee: brought in from Respondent's other plants. Nor can I find on this record that the tests, particularly the Humm-Wadsworth personality test, validly demonstrated anything probative of the abilities of those tested or that the tests were other than a facade and subterfuge. In the same connection, there is undenied testimony by Neville that Sutherland told him early in April that "the union boys" would be given physical and mental or psychological tests "that probably would eliminate a whole lot of them."

Teverbaugh had prepared for the hearing a compilation, admitted by stipulation,⁵⁸ showing the "interviewing and hiring steps" followed by Respondent respecting the 72 terminated Texas Gas employees named in the complaint. In final result, only 11 of these were hired, of the 37 hourly paid employees on Respondent's payroll in June.⁵⁹

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Respondent's compilation indicates the following disposition of the Texas Gas employees:

⁵⁸ The document, as Respondent Exhibit No. 67, was received in evidence at record page 769. The failure in the transcript specifically to note the admission of this exhibit is hereby corrected.

⁵⁹ Earlier in the hearing, Sutherland had testified that Respondent currently had 33 hourly employees at the plant, plus 4 pumpers at the Port Neches terminal. Of the 37, he flatly testified that a total of only 22 came from Respondent's other plants, including the 4 at the terminal, and that none were entirely new employees. Implicitly, the later document introduced would reflect 26 transferees from other plants, as against 11 former Texas Gas employees, currently employed; and the 26 exceeded by 5 the number who passed the mental tests. Moreover, the 33 at the plant presumably were intended to include some nonoperating employees, such as rackmen.

- I. 11 are currently employed.
- II. 2 were offered employment but failed to pass the physical.
- III. 1 declined offer of employment.
- IV. 4 failed to respond to Respondent's initial letter of February 22.
- V. 1 was interviewed but drafted before he could complete "employment process."
- VI. 1 was interviewed but obtained other employment before he completed "employment process" and asked not to be considered further.
- VII. 1 was scheduled for interview but failed to appear.
- VIII. 27 failed to pass "employment test."
- IX. 15 were "interviewed but disqualified on other grounds such as absenteeism, health, position for which they were applying either filled by other applicants or eliminated and the like."
- X. 8 were "interviewed but not hired because they were applying for maintenance work."
- XI. 1 "maintenance employees; therefore applications were not solicited."⁶⁰

An analysis of this document, especially when measured against other evidence in the record, reveals a number of patent flaws and inconsistencies. Particularly as regards items VIII and IX, I am left with the clear impression that the reasons stated were fabricated *post facto* to ac-

⁶⁰ McClure, who also had 3 years' experience at Texas Gas in operations, wrote Respondent actually seeking an operating job but was not sent an application.

commodate the actual hiring results. As originally prepared, item VIII showed a total of 32 failing the test. (Psychological Service Institute reported that 34 had failed.) Respondent *argued* that it did not rely on the results of the personality test.⁶¹ Respondent corrected item VIII at the hearing, removing five names (Farris L. Bourque, N. D. Cooper, J. L. Lindsey, W. M. Van Norstrand, and Arnold O. Mitchell), and placing them in item IX. It had been revealed that these five had passed the Wonderlic and mechanical aptitude tests and that, as was later stipulated, they had failed the personality test.⁶² Mitchell was the chairman of the Union's "Workmen's Committee";⁶³ Lindsey was a present member and Van Norstrand a former member of the committee. The personnel files of these five employees, from both Texas Gas and Respondent,⁶⁴ were introduced in evidence.⁶⁵ In the personnel file of

⁶¹ Ford, of the testing institute, who was asked by Respondent's counsel whether he had been "informed" that the personality test had been disregarded by Respondent,—answered that he had "found that out the last day or two" (of the hearing), but later stated he did not "know" what Respondent did. I do not accept this testimony of Ford as evidence of the fact.

⁶² Since 29 of the Texas Gas "applicants" had passed the Wonderlic and aptitude tests and 22 had passed all tests, these were 5 out of the 7 who had failed the personality test.

⁶³ The basic negotiating and grievance committee of employees at the plant.

⁶⁴ A form record of their "interview" appears in each of their files. It is noted that they were asked the "minimum wage acceptable" and they indicated willingness to accept less than their Texas Gas wage. It may be fairly assumed that other Texas Gas interviewees responded similarly and that Respondent was not offering the same wage these employees had previously been paid.

⁶⁵ The personnel files of the other 10 employees in category IX who were "disqualified on other grounds" etc., were not introduced nor were the files of any of the other Texas Gas employees involved.

of each, a summary slip prepared by Respondent for its own use at the hearing, indicates these five employees were not hired because they had "failed test." The same slip also reveals special comments made by Respondent concerning past union and concerted activities of these employees.⁶⁶ Each of these five employees had received highly commendatory letters of recommendation following the terminations of February 14.⁶⁷ The other 10 employees in item IX had as a whole passed the Wonderlic and aptitude

⁶⁶ The notations were that **Bourque** had filed certain grievances; that **Lindsey** had "applied for unemployment during the strike" (at Texas Gas in the fall of 1961), and in June 1959, had taken a leave of absence to attend union business; that **Mitchell** took a grievance to arbitration and received \$1,259 in backpay; had applied for unemployment during strike; had "allegedly threatened to stomp 'hell' out of the plant superintendent indicating this type of flareup was frequent"; and in June 1959, had taken a leave of absence to attend union business; and that **Van Norstrand** was "Member of union committee."

⁶⁷ As authorized by Sutherland at the 8 a.m. staff meeting on February 14, *supra*. A total of 45 such letters of recommendation had been written for the Texas Gas hourly employees who requested them. Included are letters for 7 of the 10 names listed in category IX above. Each department head had prepared the recommendation as to his own men, with the help in some cases of the personnel director, and all were signed by Neville, as general superintendent, beginning February 19 and running into April. Neville relied principally on the reports of the supervisors and he himself believed in each case that the employee was entitled to the recommendation based upon his current status as to performance and efficiency. All the letters were written under Respondent's letterhead, except three dated on and after March 7, which carried the name of Texas Gas. In March, Woolfolk had instructed Neville to change the letterhead because of objections made by Respondent's legal department. In terminating Neville on May 15, Sutherland told him that it was because he had signed those letters, and that the legal department "blew their top," and said it would be a "bombshell" because these letters would affect "this unfair labor practice [case]."

tests with unusually high marks; (their scores on the personality test were not revealed). It is more than passing strange that they were thus permitted to progress to the stages of being "interviewed" and given the various mental tests and then disqualified on the vague, unsubstantiated, and, I find, incredible grounds stated. The impression which Respondent sought to create at the hearing was that Texas Gas employees were fairly tested on a par with certain employees of its other plants. Indeed, if Respondent were going to hand pick the few Texas Gas employees whom it finally hired, there was simply no reason for putting the employees through the elaborate obstacle course of the applications, interviewing, and mental and physical tests—clearly unlike the handling of the other Texas Gas personnel it hired. Quite apparently, the purpose was camouflage and deception.

(6) Elements relating to Section 8(a)(5) allegations

The Board certifications and the Union's collective bargaining contract with Texas Gas indicate, and I find, that the historical appropriate bargaining unit consisted of—

All production, operating and maintenance employees at the plant at Winnie Texas, and operating and maintenance employees at the dock site, Port Neches, Texas, excluding all plant protection employees, professional employees, maintenance pipefitters, their leadermen and their helpers, pipefitting welders, their leadermen and their helpers, maintenance electricians, their leadermen and their helpers, instrumentmen, their leadermen and their helpers, office clerical employees, administrative and executive employees, confidential employees, foremen and supervisors as defined in the Act.

Documentary evidence of the Union's dues records and the checkoff of dues by Texas Gas for December, January and early February shows dues paid by 69 employees in the unit, of 74 on the payroll as of February 8. Accordingly, it is established that the Union actually represented a majority of

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employees in the bargaining unit—at least until the termination of the Texas Gas operating agreement on February 14.

On January 1, the Union wrote to Respondent, in part as follows:

When the Union heard that your Company was purchasing the business, this Union sent Texas Gas Corporation a formal request by telegram that it negotiate immediately with this Union covering the matter and that any sale of the stock or assets of Texas Gas Corporation be made subject to the terms of the collective-bargaining agreement and provide that the purchaser or purchasers of the stock or assets be required to assume the obligation under the collective-bargaining agreement.

Although Texas Gas Corporation promised to meet and negotiate on the matter before any sale was made, it failed to do so. Therefore this Union had no opportunity to negotiate on the terms of the sale of the business to your Company. * * *

. . . even if your Company were not legally bound by the terms of the current collective-bargaining agreement, this Union hereby notifies you that this Union represents a large majority of the employees in the above-stated bargaining unit. The Union, therefore, requests that you meet with it immediately (this week, if possible) and either sign an acknowledgment

that your Company and this Union are bound by the terms of the current bargaining agreement, or to negotiate a new agreement covering the employees in the stated bargaining unit. If there is any doubt that this Union does not (sic) represent a majority of the employees in the stated bargaining unit, this Union is prepared to prove its majority status by card check or otherwise.

On January 11, Respondent replied, in pertinent part, that it presently has no employees at the Winnie plant, although at a later date it plans "to take maximum advantage of the utilization of our present employees in the final staffing of this facility"; that Texas Gas is operating the facility as an independent contractor for Respondent; that the Union has a contract with Texas Gas still in effect and is currently engaged in collective bargaining; and that there is no business to discuss and therefore no purpose in Respondent meeting with the Union.

On February 14, the Union sent Respondent a wire stating, in substance, that despite Respondent's actual control over the employees at the plant since January 1, Respondent has refused to honor its duty to bargain with the Union, as requested; that the Union learned "today" of the decision "to close all or part of the plant immediately and contract out work which could be done by many of your employees at the plant"; and that the Union requests a meeting at once to bargain "concerning the necessity of any partial or total shutdown, concerning the assignment of work during any such shutdown," and "concerning the wages, hours, working conditions and recall rights" of the employees represented by the Union.

On February 18, Respondent answered the Union in effect by referring to its previous letter of January 11, and by rejecting the Union's request.

Following the December 22 meeting with the unions at the plant, discussed *supra*,⁶⁸ Texas Gas had further meetings with the Union: On January 3, the purpose was to advise the unions of the sale and the title passing to Respondent on January 1 and that the operating agreement was finalized and in effect for a maximum of 3 months. On January 10, the principal purpose was to discuss several grievances which had been carried over from December. On February 7, as well as at the meetings in January, the parties discussed, but failed to agree, on a proposal of the unions for a 5 percent wage increase under an area pattern.⁶⁹ On February 18, after protest had been made by individual employees, Texas Gas met with the union representatives and agreed to pay the employees an extra week's pay as a consequence of the failure to give them notice of termination.

Although Respondent apparently contends that Texas Gas fully negotiated terminal issues with the Union, it is *not* Respondent's position that Texas Gas, as its agent, had bargained with the Union on Respondent's behalf. It should be clear that Texas Gas is not a respondent in this complaint. While the evidence taken does not establish that Texas Gas did fulfill its bargaining obligations, neither does it establish that it did not, since the question of a violation by Texas Gas cannot be considered as having been litigated in this case.

⁶⁸ At the meeting of December 22, the Union also proposed modification of the collective bargaining agreement to include a provision that sale of the Texas Gas facilities be made subject to the agreement and the purchaser be required to assume all the obligations under the agreement. The proposal was rejected.

⁶⁹ The Union had formally reopened the collective bargaining contract for renegotiation concerning the 5 percent pattern increase.

E. Concluding findings

Elements in the evidence taken as a whole overpoweringly point to an unlawful and discriminatory design of Respondent, in succeeding to the Winnie plant, of deliberately terminating and refusing to employ the hourly paid employees represented by the Union, so as not to be encumbered by an obligation to deal with the Union,—*inter alia*: (a) The long experience of these employees in operating and maintaining a refinery, particularly this refinery, having a functional integration with the natural gas pipeline system and the Port Neches terminal; and the absence of such experience on the part of the employees brought in by Respondent from its other plants, none of which is a refinery (or a petrochemical plant). (b) The letters of recommendation showing the hourly paid employees were competent and qualified, and the evidence that Respondent's legal department became alarmed that these letters would affect Respondent in the instant proceeding. (c) The nonunion situation at Respondent's other 14 operating plants. (d) Respondent's specific exclusion from the purchase transaction of all employment contracts, including the existing collective bargaining agreements (and then hiring substantially all the former personnel, with the significant exception of those represented by the Union). (e) Respondent's failure to show any plausible or credible reason, as I find, for entering into the operating or alleged independent contractor agreement with Texas Gas on January 1, and for not directly undertaking operation of the plant itself with the existing personnel. (f) Respondent's hiring on January 1 of the administrative, sales and office personnel at the Houston location, and the truck-drivers and traffic complement at the Winnie plant; on February 11, of substantially the entire pipeline department of some 50 people; and on February 14, of the exist-

ing office, engineering and supervisory forces at the plant. All the foregoing were unrepresented by a union. In these extensive hirings, none was subjected to the mental tests as were the Union-represented hourly paid employees. (g) The summary manner in which Respondent on February 14 accomplished the shutdown and terminations of the hourly paid

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employees. (h) The 40-50 employees summoned from its other plants to be *trained* for work at Winnie, without reason for this wholesale transfer except (as found *infra*) to replace and bar the Union-represented employees. (i) Respondent's attenuated procedures in taking employment applications of Union-represented employees calculated to discourage and eliminate as many as possible. (j) Submitting screened applicants from among the Union-represented employees to aptitude and personality tests as a guise or show of impartial selection in a competition between Respondent's employees from other plants and the group represented by the Union. (k) the actual results of the tests, showing an inordinate and inexplicable disparity in the number of Respondent's employees who were given passing scores as compared with the Union-represented employees. Respondent's employees who failed the tests and were not hired at Winnie were retained in its employ elsewhere, whereas many of the Union-represented employees, with high test scores, were nevertheless, belatedly, refused employment for various artificial reasons supposedly based on their employment records with Texas Gas. (l) The evidence that Respondent in making the selections from among the Union-represented employees eliminated, on pretextuous grounds, pre-

sent and past members of the Union "Workmen's Committee" and took particular cognizance of the employees' past concerted and union activities while employed with Texas Gas. (m) the ultimate employment of only 11 of the Union-represented group, of 37 hourly paid employees on Respondent's payroll in June, indicating effective destruction of the Union's majority in the original unit of some 72 employees.

The situation is such as would call for clear grounds of justification from Respondent. As principal defense for its various actions related herein, Respondent lays great stress upon its program for petrochemical conversion of the Winnie plant. However, as the overall evidence demonstrates, this approach scarcely serves to meet the direct issues involved. No such transformation of the plant—or more especially of the work functions of the affected employees—took place or is in the making, as Respondent sought to impress. At no point, up to the time of the hearing and as projected thereafter, were any of the Texas Gas employees rendered unqualified for their same jobs by reason of the asserted program for petrochemical conversion.⁷⁰ On February 14, when the partial shutdown and the alleged discriminatory terminations were effected, there was clearly available work for all the hourly paid employees in both the operating and the maintenance classifications.

It is evident that Respondent had laid careful plans predating its actual purchase of the Winnie plant as to the manner it would proceed with operations and staffing. Its consistent aim was to take over the plant in a shutdown

⁷⁰ From the probative evidence, the "program" is more accurately described as a plan to improve the existing operations by producing higher octane gasoline and by recovering aromatic chemicals.

state. By its actions on February 14, it sought to, and did accomplish an interim shutdown condition so that it would not be deemed the employer of the existing hourly paid employees at the plant. It was then ready to move in with its prepared personnel from other plants. As he revealed, Sutherland had set these plans in motion to the point where most or all such outside personnel had arrived at the plant by February 17. The inferences are compelling that Respondent had partially shut down on February 14 with the intention of promptly resuming full operations, at least for an indefinite time,—staffing the operating, loading rack and terminal functions with employees from its other plants to be trained by the Winnie plant supervisors, and handling routine maintenance with supervisors and other available help until the Fluor people came in. The clear fact is that outside employees of Respondent (numbering 40 to 50) were sent for and did arrive, prepared for an indefinite stay. The initial contingent was put to work. As to the remainder, from the evidence that “some one jumped the gun, and got them in too early,” etc., it is apparent that in any event Respondent had originally intended to use these men at the time in operating the plant. However, as indicated by Sutherland and by the events, a sudden and unexpected decision was made by

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Respondent on February 17 “to extend the shutdown,” and as a consequence those employee arrivals after February 14 were summarily sent back to their plants, because Respondent “might get into trouble by having the men there so early.” As it turned out, operations were maintained on a limited basis until about June 3, when fuller operations were resumed with a permanent staff of 37

hourly personnel. Only after penetrating inspections had been made, starting about March 14, was it discovered that much of the refinery equipment was in bad condition. It is clearly shown that most of the repair work done by Respondent until June 3 was unrelated to petrochemicals, involved change or overhaul of deteriorated equipment, and consisted mainly of work which was planned and would probably have been performed by Texas Gas itself absent the sale to Respondent. At the time of the hearing, the major field construction work had not yet begun but was planned to be started shortly; nevertheless, it was made plain that operations would continue thereafter without any further shutdown.

For Respondent's part, the subject of the approximately 40-50 employees it brought in from its other plants on and after February 14 is left vague. Sutherland, who has been discredited elsewhere, gave the only detailed testimony in the matter for Respondent. No documentary evidence was introduced, nor corroboration offered from any of the particular 40-50 employees. How they were selected, for how long, their rate of pay, their preparations and instructions,—were not shown. Particularly in light of the other evidence in the case, it would surpass credulity to accept Sutherland's explanation that these were regular operating employees who constituted a surplus taken from each of Respondent's 14 other plants (in which there was a total of 235 employees in all hourly classifications). No attempt was made to reconcile the placement of these employees in the nonoperating jobs, e.g., rackmen and terminal pumpers. Nor, without supporting evidence of a better quality, is Sutherland's somewhat revealing statement acceptable that these employees were maintained as surplus as part of Respondent's acquisition program in .

which it purchased and similarly staffed a new plant in each of the past 10 years.⁷¹ Any concept of sound business practice would dictate strongly against the maintenance, for a relatively long and indefinite period, of such a large number of surplus employees for the purpose indicated by Sutherland, especially as they had to be trained at Winnie to perform the necessary work. I believe it certainly no coincidence that of all the various categories of personnel at the acquired facilities, Respondent chose to transfer to Winnie only this special contingent from its other plants to fill the jobs of the terminated *operating* employees, and that Respondent went to the considerable lengths it did to set up this elaborate and expensive transfer operation. Perforce, the inference to be drawn is that the availability and use of these 40-50 employees are attributable solely to a purpose of Respondent of getting rid of the Union-represented employees at Winnie.

A fair assessment of all the evidence establishes that Respondent possessed and exercised in a substantial degree control over the manner and means of the day to day performance under the operating agreement. Based upon the "total situation," and applying accepted criteria,⁷² it is concluded, therefore, that Texas Gas was not an independent contractor under the Act, and that Respondent was legally the employer or coemployer of the hourly paid employees in question during the period of the operating agreement from January 1 to February 14. In the circumstances, the reiterations in various documents that Texas Gas was an independent contractor are of no avail. The

⁷¹ As earlier noted, Allied Chemical acquired Texas Gas with its 14 plants in April 1962.

⁷² See, e.g., *Deaton Truck Lines*, 143 NLRB No. 124; *N.L.R.B. v. Nu-Car Carriers*, 189 F.2d 756 (C.A. 3), cert. denied 342 U.S. 919; *National Van Lines v. N.L.R.B.* 273 F. 2d 402 (C.A. 7).

detailed factors have already been described and need only be summarized: (a) Respondent's motive, as I find, for entering into the

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operating agreement was to avoid taking over the operation itself at an inappropriate time when, among other things, it was not ready with its own restaffing plans. (b) The operating agreement broadly qualifies the discretion of Texas Gas to operate and maintain the subject facilities by the provisions—"as requested by Company by prior instructions" and "in a condition satisfactory to Company." These provisions were left vague (I believe deliberately), and are given meaning only by the actual practice of the parties from the outset in having Quinn installed on the premises, as Respondent's official representative, making decisions on virtually all matters of consequence, which decisions the plant supervision was required to follow by the blanket order of Texas Gas top management. (c) the operating agreement in practical effect was terminable at will—as indeed it was terminated at Respondent's will, without giving effect to the provision for 15 days' notice. (d) All money expenditures, other than payroll, were directly in Respondent's control. In the operation of an entire plant of this kind, where routine maintenance and repair regularly required the purchase of materials, supplies, and equipment, such control of the purse strings was vital. (e) The number of hourly paid employees in each job classification and the salaries and wage rates were limited by Respondent to the situation existing before the operating agreement. The effect, in part, would tie the hands of Texas Gas in collective bargaining with the plant unions. (f) The overall operations

conducted by Texas Gas prior to the operating agreement could not realistically be severed by Respondent managing the administrative, sales, marketing, shipping, and (on February 11) the pipeline activities, without Respondent exerting control over the plant operations purportedly delegated to Texas Gas. Admittedly, Respondent directly supervised during this period the work of the rackmen and truckdrivers at the plant and the pumpers at Port Neches. These functions were clearly embraced by the operating agreement. Moreover, the 10 rackmen and 4 pumpers were included in the bargaining unit, so that Respondent was directly acting as employer of Union-represented employees. (g) Respondent furnished all equipment, materials, tools, and premises. Texas Gas was paid strictly a fixed fee. Texas Gas put up no risk capital and had no latitude whatsoever to make decisions which would govern its own profit or loss. Indeed, no supervision or management was furnished by Texas Gas above the plant level. Plant operations were wholly conducted by General Superintendent Neville subject to instructions from Respondent's official representative, Quinn. Further, Texas Gas was in the process of liquidating; it was no longer engaged in an independent business which would continue. (h) As Respondent was the new owner, and the operating agreement was for a brief period, Respondent was aware that any indicated desires on its part would naturally have a controlling impact on Texas Gas personnel. (i) The fact and extent of Respondent's control is graphically demonstrated by its actions on February 14—while the operating agreement was in effect. Without notice, it took command of the plant, summoned a general meeting, hired the Texas Gas supervisors, engineers, and administrative staff, shut down the plant, terminated the hourly paid help represented by unions, and issued a variety of other significant orders.

Upon the record as a whole, I conclude that on February 14 Respondent, as their actual employer or coemployer, discharged the 72 hourly paid employees (listed in the Appendix hereto) because of their union membership.⁷³ It must be borne in mind that complaints of this kind are normally supportable only by circumstances and circumstantial evidence.⁷⁴ Here, it is plain that the terminations were effected as a direct consequence of Respondent's

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calculated and fixed resolve to eliminate the preexisting unionized situation at the newly acquired Winnie plant, thereby avoiding a bargaining obligation with the Union when it took over operation of the plant. Accordingly, Respondent violated Section 8(a)(3) of the Act, as alleged.⁷⁵ Essentially the same result would follow without the finding that Texas Gas was not an independent contractor, since it is clear in any event that (a) the Texas Gas hourly paid employees were applicants for employment with Respondent, and as such employees under the Act,⁷⁶ (b) they were qualified employees for whom there were available jobs after February 14, and (c) they were

⁷³ Although Respondent's payroll of February 8 reflected 74 hourly paid employees in the bargaining unit, the complaint alleges that Respondent on February 14 discriminatorily terminated 72 named employees. Accordingly, it is assumed that the complaint lists all such employees on Respondent's payroll as of February 14.

⁷⁴ *N.L.R.B. v. Link-Belt Co.*, 311 U.S. 584, 597; *N.L.R.B. v. T.I.L. Sportswear Corp.*, 302 F.2d 186, 190 (C.A.D.C.).

⁷⁵ E.g., *New England Tank Industries*, 133 NLRB 175, enfd. 302 F. 2d 273 (C.A. 1), cert. denied 371 U.S. 875; *Plasecki Aircraft Corp.*, 123 NLRB 348, enfd. 280 F. 2d 575 (C.A. 3), cert. denied 364 U.S. 933.

⁷⁶ *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177; *Utah Construction Co.*, 95 NLRB 196, 203.

denied employment for the same discriminatory motive above described.⁷⁷

As I am of the opinion that the operating agreement was a sham, and that absent Respondent's discriminatory refusal to employ the Texas Gas hourly paid employees, they would have directly been placed on Respondent's payroll beginning January 1, I find that Respondent, by its letter of January 11 and conduct thereafter, unlawfully refused to bargain with the Union as the proven majority representative of these employees in the appropriate unit, thereby violating Section 8(a)(5) of the Act.⁷⁸

Respondent further violated Section 8(a)(5) generally in refusing to bargain with the Union upon its request of February 14, and specifically in failing to notify and consult with the Union concerning the decision to subcontract the maintenance and repair work to Fluor (i.e., the contract entered into with Fluor subsequent to February 20).⁷⁹ Under Board precedent, to support the latter violation found it is immaterial whether or not the subcontract was discriminatorily motivated. Nonetheless, it is my view that specific resolution of this point would serve at least a clarifying purpose. The principal difficulty re-

⁷⁷ *Piasecki Aircraft Corp., supra.*

⁷⁸ Cf. *Piasecki Aircraft Corp., ibid.* Even assuming under other circumstances, that the hourly paid employees were not technically employees of Respondent for purposes of Section 8(a)(5) from January 1 until 4 p.m. on February 14, a bargaining order against Respondent would appropriately lie as a remedy for the Section 8(a)(3) violation, *inter alia*, to deprive Respondent of any advantage gained in violating the Act for the reasons that it did. *Id.*; *Editorial "El Imparcial" Inc. v. N.L.R.B.*, 278 F. 2d 184 (C.A. 1).

⁷⁹ *Town & Country Mfg. Co. v. N.L.R.B.*, 316 F. 2d 846 (C.A. 5), *enfg.* 136 NLRB 1022; *Fiberboard Paper Products Corp. v. N.L.R.B.* 53 LRRM 2666 (C.A.D.C.), *enfg.* 138 NLRB No. 67; and *e.g. Riverside Wholesale Distributors*, 142 NLRB No. 72.

sides in the evidence that an average of 70 Fluor workers were used—from March until the hearing in June. This fact would ordinarily be indicative of a need from the outset for a maintenance crew much larger than could be feasibly handled by the maintenance complement of 27 employees under Texas Gas. In all other respects, the Fluor work done during this period was essentially routine maintenance of the character normally performed by the Texas Gas maintenance employees. And, normally under Texas Gas, maintenance and repair were subcontracted out when necessary, but only as a temporary supplement to the regular crew. It has already been established that Respondent was unlawfully motivated to oust the Union-represented Texas Gas employees, including those employed in maintenance work. Respondent has set certain forces in motion which carry *prima facie* discriminatory implications; and the evidence, even from certain of its own witnesses, refutes the defenses advanced in justification for its actions. Further circumstances to be taken

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into account are, *viz*: None of the 14 Union-represented maintenance employees was employed by Fluor, although 10 of the 13 electricians and pipefitters were hired.⁸⁰ Respondent refused to consider the Union-represented maintenance employees for any work with Respondent, even though some of these employees had qualifying experience with Texas Gas in capacities other than maintenance. The bulk of the repair work done before June 3 became necessary only after Respondent first discovered in March

⁸⁰ As earlier shown, Respondent conditioned the award of a subcontract to Fluor on the existence of a "mutually satisfactory basis for obtaining the necessary labor" for the job.

serious conditions of deterioration in the plant equipment. Undoubtedly, a substantial part of the Fluor crew of 70 devoted itself to such repair work. And it is not improbable that Texas Gas would have discovered the same conditions and made the repairs, engaging subcontractors only to the extent that the work could not be handled by the regular maintenance crew. The Fluor subcontract, terminable on 30 days' notice, appears primarily to embrace routine maintenance, emergency work, janitorial services, and turnaround work, i.e., the usual type of maintenance done by the Texas Gas group. In addition, the contract embraced virtually all the Winnie facilities purchased by Respondent, including the pipelines, and it does not otherwise appear that the work of Fluor was confined to the Winnie plant proper. On the other hand, there is no indication that the Texas Gas maintenance department performed work outside the Winnie refinery. The subcontract would also well serve Respondent's purposes in breaking up the existing appropriate unit. In light of all these considerations, I find that Respondent entered into the Fluor subcontract to the exclusion of the Union-represented maintenance crew for the same discriminatory reasons that it barred from employment the production and operating employees represented by the Union.

IV. The effect of the unfair labor practices upon commerce

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. In view of the nature of the unfair labor practices committed, i.e., discrimination against employees which "goes to the heart of the Act," the commission by the Respondent of similar and other unfair labor practices may be anticipated. Therefore, a cease and desist order in its broad form is warranted and will accordingly be recommended.⁸¹

It has been found that Respondent discriminatorily terminated on February 14 the 72 hourly paid employees named in the Appendix. However, as appears herein, Respondent subsequent to February 14 may have been economically justified in temporarily laying off or terminating some of its operating employees because of reduced operations. These are matters essentially to be handled in the compliance stage of the proceeding. For such purpose, certain findings and factors are specifically noted for consideration: The Texas Gas maintenance employees would have worked all during the period subsequent to February 14 at least to the date of the hearing in June. After February 14

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Respondent continued to use, in operating the plant, at least 14 replacement employees from its other plants and supervisors performing rank-and-file work. From Neidert, Respondent's witness, it is established that it was not

⁸¹ N.L.R.B. v. Express Publishing Co., 312 U.S. 426; N.L.R.B. v. Entwistle Mfg. Co., 120 F. 2d 532 (C.A. 4).

until about March 14 that inspections, with depressurizing and draining, were undertaken leading to the first legitimate curtailment of operations to repair the deteriorated equipment discovered. Therefore, it is found that all the Texas Gas production and operating employees would, absent discrimination, have worked until at least March 14. About June 3, there was a resumption of operations, in part, with 37 hourly employees, including 11 of the Texas Gas employees. No further shutdown is contemplated, although major construction work was planned to begin in about July.

Under the circumstances, it shall be recommended that Respondent offer to the 72 employees listed in the Appendix, who were unlawfully terminated on February 14 and who have not been recalled for employment, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and in the event that there is insufficient work for all such employees, to dismiss, if necessary, all persons who were hired or transferred after the discriminatory terminations on February 14. If there is not then sufficient work for the remaining employees and those to be offered reinstatement, all available positions shall be distributed among them without discrimination against any employee because of union or concerted activities, in accordance with a system of seniority or other nondiscriminatory basis. Respondent shall place the discriminatees, if any, for whom no employment is available after such distribution, on a preferential list, with priority in accordance with a system of seniority or other nondiscriminatory basis, and thereafter offer them reinstatement as such employment becomes available and before other persons are hired for such work. It shall also be

recommended that Respondent make whole the named employees for any losses they may have suffered because of Respondent's discrimination, by payment to each of them a sum of money equal to the amount that he normally would have earned but for the discrimination. In the appropriate cases, the offer of reinstatement, or placement on a preferential list, will serve to cut off backpay liability. The backpay is to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289, 291-294, and shall include the payment of interest at the rate of 6 percent per annum to be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716. It will also be recommended that Respondent preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amount of backpay due and the rights of reinstatement under the terms of these recommendations.

It has been found that Respondent refused to bargain generally with the Union, on and after January 11, following the Union's bargaining request. It shall therefore be recommended that Respondent be required, upon request, to bargain with the Union as the representative of its employees in the appropriate unit, after offering reinstatement to the discriminatees pursuant to the Section 8(a)(3) remedial order recommended above. Although alleged, no finding has been made that Respondent refused to bargain with the Union concerning the shutdown and terminations on February 14, as the remedy in any event would be the same as that recommended above for the Section 8(a)(3) violations. However, it has been further found that Respondent violated Section 8(a)(5) by uni-

laterally subcontracting its maintenance work without fulfilling its bargaining obligation with the Union on the subject. It shall therefore be recommended that Respondent cease and desist from unilaterally subcontracting unit work without notifying and consulting the designated bargaining agent. It has been recommended that the maintenance employees discriminated against be ordered reinstated under the Section 8(a)(3) remedy. In accordance with the Board's policy in the *Town & Country* case, *supra*, in order to adapt the remedy "to the situation which calls for redress," it shall be recommended that Respondent be ordered to restore the *status quo ante* by abrogating its

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maintenance contract with Fluor and reinstituting the maintenance department as it existed prior to February 14.² Respondent may, of course, lawfully subcontract its maintenance work after its obligation has been satisfied as a result of good faith bargaining with the Union.

Conclusions of Law

1. Respondent is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminating in regard to the hire and tenure of employment of 72 employees, listed in the Appendix, because of their membership in the Union, Respondent has

² As shown, Respondent's subcontract with Fluor is terminable at any time upon 30 days' notice.

engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

4. All production, operating and maintenance employees at the plant at Winnie, Texas, and operating and maintenance employees at the dock site, Port Neches, Texas, excluding all plant protection employees, professional employees, maintenance pipefitters, their leadermen and their helpers, pipefitting welders, their leadermen and their helpers, maintenance electricians, their leadermen and their helpers, instrumentmen, their leadermen and their helpers, office clerical employees, administrative and executive employees, confidential employees, foremen and supervisors as defined in the Act constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times material, and particularly since January 1, 1963, the union has been the exclusive representative of all the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

6. By refusing and failing to bargain with the Union, upon its request, and by unilaterally subcontracting its maintenance operations without first notifying and consulting with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the foregoing conduct, the Respondent has also interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them in Section 7 of the Act, and has thereby committed unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that Union Texas Petroleum, a Division of Allied Chemical Corporation, Winnie, Texas, and New York, New York, its officers, agents, successors, and assigns shall:

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1. Cease and desist from:

(a) Discouraging membership in Oil, Chemical and Atomic Workers International Union, Local 4-243, AFL-CIO, or in any other labor organization of its employees, by discriminatorily discharging, terminating, laying off, or refusing to hire, any employee or in any other manner discriminating against any employee in regard to hire, tenure, or any other term or condition of employment.

(b) Refusing to bargain collectively with the above-named Union as the exclusive representative of its employees in the appropriate bargaining unit; and unilaterally changing their wages, hours or other terms or conditions of employment by subcontracting out work in the appropriate unit, without giving prior notice to and consulting with the above-named Union or any other union which they may select as their exclusive bargaining representative.

(c) In any other manner interfering with, restraining or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named Union as the exclusive representative of all the employees in the appropriate unit in respect to wages, hours, and other terms and conditions of employment, and embody any understanding reached in a signed agreement; and for the reasons set forth in "The remedy" section of the Trial Examiner's Decision, reinstitute the maintenance department as it existed prior to February 14, 1963.

(b) Offer to the employees named in Appendix, attached hereto, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of earnings suffered by reason of the discrimination against them in the manner set forth in the "The remedy" section of the Trial Examiner's Decision.

(c) Preserve and make available to the Board or its agents all payroll or other records, as set forth in "The remedy" section of the Trial Examiner's Decision.

(d) Post at its plant at Winnie, Texas, copies of the notice attached hereto as Appendix.⁸³ Copies of said notice, to be furnished by the Regional Director for the Twenty-third Region, shall, after being duly signed by the Re-

⁸³ If these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

spondent, be posted immediately upon receipt thereof in conspicuous places and be maintained for a period of 60 days. Reasonable steps shall be taken to ensure that said notices are not altered, defaced, or covered by any other material.

30

(e) Notify the Regional Director for the Twenty-third Region in writing, within 20 days from the receipt of this Trial Examiner's Decision and Recommendations what steps Respondent has taken to comply herewith."⁴

Dated at Washington, D. C., November 21, 1963.

BENJAMIN B. LIPTON
Benjamin B. Lipton
Trial Examiner

i

APPENDIX

NOTICE TO ALL EMPLOYEES
PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER
of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OIL,
CHEMICAL AND ATOMIC WORKERS INTER-

⁴⁴ If the Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Twenty-third Region in writing within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

NATIONAL UNION, LOCAL 4-243, AFL-CIO, or in any other labor organization of our employees by discriminatorily discharging, terminating, laying off, or refusing to hire, any employee, or in any other manner discriminating against any employee in regard to hire, tenure, or any other term or condition of employment.

WE WILL NOT refuse to bargain collectively with the above named union as the exclusive representative of our employees in the appropriate bargaining unit; and unilaterally changing their wages, hours, or other terms or conditions of employment by subcontracting out work in the bargaining unit, without first notifying and consulting with the above-named union or any other union which they may select as their exclusive bargaining representative.

WE WILL NOT in any manner interfere with, restrain, or coerce employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

WE WILL, upon request, bargain collectively with the above-named union as the exclusive representative in the appropriate bargaining unit with respect to wages, hours and other terms and conditions of employment, and embody any understanding reached in a signed agreement; and reinstitute the maintenance department as it existed prior to February 14, 1963.

WE WILL offer the employees named below immediate and full reinstatement to their former or sub-

stantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them:

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Huey Abshire
 Y. D. Allen
 Ted Atwood
 Willie Bertrand, Jr.
 A. Besch
 B. W. Biddle
 W. H. Blaylock, Jr.
 J. Boudreaux
 A. Bourque
 Farris L. Bourque
 R. L. Bower
 Wilburn Bragg
 Ambrose Breaux
 H. B. Briggs
 I. D. Buckley
 N. D. Cooper
 J. E. Crawford
 L. P. Crosby
 Ernest A. Cryer, Jr.
 Melvin Cummings, Jr.
 Robert Devillier
 Robert N. DeYoung
 Walter C. DeYoung
 Edgar B. Dressler
 J. R. Duhon
 G. R. Falke
 J. A. Freeman
 Edward E. Galligan

E. Keeler
 Dolen E. Keenon
 H. W. Keneson
 Alvin G. Lassiter
 J. L. Lindsey
 O. W. Little, Jr.
 C. W. Lowe
 A. F. Mack, Jr.
 Buford B. Majors
 W. W. Martin
 Mark McAlpin
 Thomas L. McCure
 T. J. McCormic
 Elmo Melancon
 Erasta Meloncon
 Martin Melancon
 W. E. Meschke
 Albert T. Miles
 Arnold Ovie Mitchell
 R. O. Mitchell
 H. E. Moffett
 Ray A. Null
 Jack W. Reynolds
 Carl Satcher
 Maurice Shaver
 Olin R. Shockley
 R. M. Spencer, Jr.
 Edgar I. Staggs

W. M. Goodnight
 O. R. Hampton
 Joseph Ray Henry
 M. F. Henry
 J. D. Hold
 Fred Johnson
 Howard M. Jones
 E. E. Kahla

L. A. Stengler
 W. D. Taylor
 Gordon Trahan
 William VanNorstrand
 J. B. Voss
 R. G. Walters
 R. E. Wells
 Leslie Whiddon

All our employees are free to become and remain, or refrain from becoming or remaining, members of any labor organization.

UNION TEXAS PETROLEUM a
 DIVISION of ALLIED CHEMICAL CORPORATION
 (Employer)

Dated By
 (Representative) (Title)

NOTE: - We will notify the above-named employees if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 6617 Federal Office Building, 515 Rusk Avenue, Houston, Texas 77002 (Tel. No. Capitol 8-0611 Ext. 296), if they have any questions concerning this notice or compliance with its provisions.

I

PREHEARING CONFERENCE STIPULATION

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

Pursuant to Rule 38(k) of the Rules of this Court, the petitioner, the Board, and the intervenor in the above-captioned proceeding (herein called the Company), subject to the approval of the Court, hereby stipulate and agree as follows:

I. THE ISSUES

The parties have conferred with respect to the issues presented by this case and feel it is impossible to reach agreement. It is the conclusion of the parties that a conference before this Court would not result

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in agreement, and therefore, the positions of the parties with respect to the issues, presented are set out below:

The petitioner submits that the issues to be decided are as follows:

1. Whether the Board's failure to identify the findings of the Trial Examiner it considers "consistent" and those it considers "inconsistent" with its decision, and to explain its rationale for rejecting the latter, thwarts the reviewing function and requires remand for clarification.

2. Whether the Board erred in failing to affirm the Trial Examiner's findings that:

(a) The Company's maneuvers to avoid becoming the "employer" of unionized workers at the refinery were attributable to their union affiliation.

(b) In reality, the Company was a co-employer of the refinery workers between January 1, and February 14, 1963.

3. Whether the Board erred in dismissing the complaint.

The Board and the Company submit that the issues to be decided are as follows:

On December 31, 1962, Allied Chemical Corporation acquired certain assets of Texas Gas Corporation, including a gasoline plant at Winnie, Texas, which Allied Chemical desired to convert to a petrochemical plant. From December 31, 1962 until February 14, 1963, the gasoline plant was operated by Texas Gas pursuant to a contract with Allied Chemical. The

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gasoline plant was shut down on February 14, 1963, and the production and maintenance employees terminated. On these facts, the issues are:

1. Whether substantial evidence on the whole record supports the Board's findings that:

(a) The Company was not a co-employer of the gasoline plant workers between January 1 and February 14, 1963.

(b) The gasoline plant was shut down and the production and maintenance employees terminated on February 14, 1963, for legitimate business considerations and not for anti-union reasons.

2. Whether the Board has adequately explained the basis for its decision.

II. JOINT APPENDIX

A. The portions of the record to be printed shall be embodied in a joint appendix which shall be printed. Petitioner has served on the Board and the Company its designation of the portions of the record which it wishes to appear in the record. The Board shall serve on petitioner and the Company its designation on December 1, 1965. The Company shall serve its designation on petitioner and the Board on December 15, 1965. Petitioner shall serve its counterdesignation, if any, upon the Board and the Company by December 21, 1965. The printed Joint Appendix shall be filed in this Court and served on all parties before the date petitioner's reply brief is due.

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B. Each party shall bear the expense of printing in the Joint Appendix the portions of the record it designates. In all instances in which the Company and the Board designate the same material to be printed in the Joint Appendix, the cost of printing such material shall be divided equally between the Board and the Company.

C. The petitioner will designate for printing in the Joint Appendix the relevant pleadings, the Hearing Examiner's Decision, the Board's Decision and Order, this prehearing conference stipulation, and the Court's order on this prehearing conference stipulation.

D. The petitioner will be responsible for the printing of the Joint Appendix.

III. THE BRIEFS

In lieu of filing and serving printed briefs on the dates prescribed by Rule 18, each party may file and serve a typewritten copy of its brief on that date, with printed copies to be filed and served on the date the petitioner's reply brief is due.

IV. ORAL ARGUMENT

Petitioner requests forty five (45) minutes for oral argument. The Board and the Company request forty five (45) minutes for oral argument to be divided between them.

Dated at Washington, D. C.,
this 22nd day of November, 1965

Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board

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Dated at Washington, D. C.,
this 18th day of November, 1965

Mozart G. Ratner
818 - 18th Street, N. W.
Washington, D. C.

Dated at Washington, D. C.,
this 18th day of November, 1965

Victor A. Sachse
Breazeale, Sachse & Wilson
701 Fidelity National Bank Building
Baton Rouge, Louisiana

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 19,692

September Term, 1965

(Filed Nov. 29, 1965)

Nathan J. Paulson, Clerk

OIL, CHEMICAL AND ATOMIC WORKERS, ETC.,

v.

NATIONAL LABOR RELATIONS BOARD

Before: Fahy, Circuit Judge,
in Chambers.

ORDER

Counsel for the parties in the above-entitled case having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

P R O C E E D I N G S

Trial Examiner Lipton: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Union Texas Petroleum, a Division of Allied Chemical Corporation, Case No. 23-CA-1556.

The Trial Examiner conducting this hearing is Benjamin B. Lipton.

Will counsel and other representatives for the parties please state their appearances for the record?

Mr. Avedon: For the General Counsel, Jerome L. Avedon, 6617 Federal Office Building, 515 Rusk, Houston, Texas.

Mr. Ladwig: For the Charging Party, Oil, Chemical and Atomic Workers Union, AFL-CIO, Local 4-243, Dixie & Schulman, by Marion C. Ladwig, 505 Scanlan Building, Houston 2, Texas, attorneys, and Mr. A. O. Mitchell, Chairman of the Workmen's Committee, 2490 South Eleventh Street, Beaumont, Texas. * * *

Mr. Sachse: For Union Texas Petroleum, Division of Allied Chemical Corporation, Breazeale, Sachse & Wilson, by

Victor Sachse, 701 Fidelity Bank Building, Baton Rouge, Louisiana, and Mr. John Estes, 40 Rector Street, New York City, Mr. Elliott Flowers, of Post Office Box 2120, Houston, Texas. * * *

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Trial Examiner: There being no objection, General Counsel's Exhibits 1-A through 1-J are admitted in evidence.

(The documents above-referred to, heretofore marked General Counsel's Exhibits Nos. 1-A through 1-J, were received in evidence.) * * *

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Mr. Avedon: Yes, sir. * * *

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Our contention will be that the purpose of this operating agreement and the reason that the sale was initiated in the manner in which it was, was to eliminate the OCAW as the bargaining representative of employees at this Winnie plant. * * *

Trial Examiner: All right. Now, you mentioned two other unions, the Pipefitters and the Electricians.

How are they involved in this proceeding, if at all?

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Mr. Avedon: They are not involved in this proceeding.

Trial Examiner: They have no interest?

Mr. Avedon: No, sir, no charge was filed involving them.

Trial Examiner: All right. * * *

Mr. Avedon: Our contention is that in the period from

January 1, 1963 until February 14, 1963, that Texas Gas was operating the plant as agent for Union Texas Petroleum, or I think I will use Allied Chemical since that might be a simpler designation, since Allied Chemical owned the plant and actually Texas Gas was operating the plant, but really it was being operated by Allied Chemical. Allied Chemical was calling the shots. All of the decisions basically were being made by Allied Chemical officials. That any

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vouchers had to be signed for by Allied Chemical. * * *

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We will attempt to show that there was no immediate need for the shutdown of this plant. And that all of the employees represented by the OCAW were terminated as of this date, without any notice to them, or even permitting them to go in and receive their personal belongings at the plant.

We will prove that subsequently, subsequent to the shutdown, that the maintenance work at this plant was contracted out to Fluor Maintenance Corporation. Prior to this all maintenance work, except for very minor matters, had been performed by the maintenance employees represented by the OCAW Local.

We will prove that within a short period of time new employees were brought in by Allied Chemical from its other plants to operate this plant. And our contention is that the purpose of this whole procedure was to operate the plant on a non-union basis. * * *

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Mr. Avedon: No, sir. We contend that Union Texas was actually operating the plant through its control and exercise of authority over employees of Texas Gas under the operating agreement. * * *

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Trial Examiner: Fine.

Mr. Sachse, would you care to make any comments or an opening statement of the Respondent's position?

Mr. Sachse: Yes, Mr. Lipton, if it please the Trial Examiner, we would like to say that we will show that Allied Chemical Corporation is a national corporation with about two hundred plants scattered around the country, with

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about one hundred-sixty or more union contracts, with no anti-union animus whatever.

That we have at least seventeen contracts with OCAW in fourteen plants, representing over two thousand members, employees, and we have no animus or any purpose in trying to force OCAW from the Winnie plant. * * *

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Mr. Avedon: At this time would you care to read the stipulation we have entered into, Mr. Sachse?

Mr. Sachse: Yes, sir.

It is stipulated that if Earl Elliott, Secretary and Gen-

eral Counsel of Texas Gas Corporation were called by the General Counsel and sworn, he would testify that the records of Texas Gas Corporation would show the employees of that company at the Winnie, Texas plant as of February 8, 1963, to be those shown on the four pages—I have here four attached pages.

Mr. Avedon: Well, that is General Counsel's Exhibit—

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Mr. Sachse: Four pages designated as General Counsel's Exhibit—

Mr. Avedon: 2.

Mr. Sachse: —2. And that their employment was terminated by Texas Gas Corporation on February 14, 1963.

* * *

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Mr. Avedon: It is stipulated that if Earl Elliott, Secretary and General Counsel of Texas Gas Corporation, were called by the General Counsel and sworn, he would testify that

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the records of Texas Gas Corporation would show that the employees of that corporation doing work of Texas Pipe Line Corporation as of February 8, 1963, were those shown on General Counsel's Exhibit 3, a two-page document, and that their employment was terminated by Texas Gas Corporation on February 11, 1963.

Trial Examiner: Is that the entire proposed stipulation?

Mr. Avedon: Yes, sir.

Trial Examiner: Well, Mr. Sachse, we do have an issue here. The arguments you make would, of course, go to questions of relevance and the weight to be given, if admitted.

It may be entitled to very little weight, but dealing now with the question of admissibility and on the basis of that it is essentially an issue of weight, and sufficient question has been raised in the contentions of the General Counsel, I will overrule the objection and admit the stipulation and General Counsel's Exhibit 3, but you will, of course, have your arguments on the record and will, of course, make your same arguments and position known in your briefs or in further arguments before me and before the Board, if you so desire. * * *

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I would like to ask you, Mr. Avedon, and Mr. Ladwig, for the Charging Party, whether the meaning of the Complaint—now I am addressing myself to you, Mr. Avedon—is that the union is the majority representative of the present employees

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of the Respondent?

Mr. Avedon: Do you mean—

Trial Examiner: There is language in the Complaint that appears to read that way.

Mr. Avedon: On which paragraph is that, sir? Is that Paragraph 6?

Trial Examiner: Let's see.

"At all times since 1952, and continuing to date, the union has been the representative of a majority." Paragraph 6.

Now, let me put the other questions—well, all right. I want to determine whether there is any issue of a request to bargain and a refusal to bargain concerning employees after February 14, that is, the present employees.

Mr. Avedon: On February 14, a request to bargain was made. There were prior requests, but in addition, on February 14 a request to bargain was made, which was rejected by the company.

Our contention is that the employees were discriminated against on February 14 and terminated because of their union membership. Therefore—

Trial Examiner: Continued to be employees?

Mr. Avedon: Yes, sir. The union still has a majority status there.

Trial Examiner: All right.

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Now, that is on one theory.

Is there any theory apart from that that by virtue of the certification that the Respondent here is responsible to honor the certification and to honor the established unit or units within the framework of this Complaint?

Mr. Avedon: No, sir.

Trial Examiner: Now, I am not interested in anything outside of the Complaint.

Mr. Avedon: No, sir.

I would have to take the position that the employer was not—I forgot how I worded it.

Trial Examiner: If you want to work your position out, we will go off the record.

Mr. Avedon: I think so.

Trial Examiner: All right.

Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Avedon: The General Counsel takes the position that based on the certification, the majority status of the union, and the fact that the union was recognized as the bargaining agent of the employees in the plant, that when Union Texas took over this plant, which we contend was effective January 1, 1963, that they then became obligated to recognize and bargain with the union at that time.

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Trial Examiner: Is that your position?

Mr. Avedon: Yes, sir.

Trial Examiner: Continuing until when?

You might have a different issue of an obligation of the Respondent to recognize the union for a period from January 1, 1963 until February 14, 1963, but is it the position of the General Counsel that continues thereafter and to date, as stated in the Complaint, even as concerns the present employees of the Respondent at the Winnie plant?

Mr. Avedon: Based on the fact of discrimination against the employees who were terminated, our contention goes beyond February 14.

Trial Examiner: Based on, solely, on the contention that the employees terminated on February 14 continued to be employees?

Mr. Avedon: Yes, sir.

Trial Examiner: Under the Act, and continued to be represented therefor by the Charging Party, but on no other theory?

Simply I want to get this clarified. There is a possibility of an issue here from the broad language of the Complaint perhaps on the theory of the successor. I think that point was mentioned by Mr. Sachse in his opening statement. That the Respondent continued as a successor and the unit continued in effect and the majority status of

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the union continued in effect after February 14 by virtue of the existing certification.

Mr. Avedon: No, we don't—I wouldn't make that contention as far as—by virtue of the existing certification.

Trial Examiner: And there is no contention of actual representation of the present employees apart from your theory that the employees of Texas Gas Corporation, who were employees of Texas Gas Corporation up until February 14, continue to be employees?

You follow that?

Mr. Avedon: I make no contention that the employees—

Trial Examiner: There is no contention of actual representation of these employees?

Mr. Avedon: Right, that the union has a majority in the plant right now, based on a card check or something like that.

Trial Examiner: There is no such contention within the framework of the Complaint?

Mr. Avedon: Right. * * *

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Mr. Avedon: I think, putting the key issue here in the case on the General Counsel's position, if it is found that Union Texas was operating—that Texas Gas was operating and acting as agent, and Union Texas was actually in control of the plant, we feel that under those terms these employees would be subject to—that Union Texas would be obligated to bargain over these employees, and from that, of course, many other facets flow, including Town and Country and many of these other things.

Trial Examiner: Yes, I follow that.

* * *

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DOUGLAS F. PIERCE

* * *

DIRECT EXAMINATION

Q. (By Mr. Avedon) Mr. Pierce, will you state your name and address for the reporter, please? A. Douglas F. Pierce, P-i-e-r-c-e, Post Office Box 2120, Houston, Texas.

Q. By whom are you employed, Mr. Pierce? A. Union Texas Petroleum, a Division of Allied Chemical Company.
* * *

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A. My job title is Director of Administration for Petrochemicals. * * *

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Q. How many petrochemical plants are there? A. None. * * *

Q. There are no petrochemical plants? A. As of today.

Q. As of today. How many plants does Union Texas Petroleum have altogether? A. I believe about fourteen.
* * *

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Q. How about Mr. Gotcher, what is his position with Union Texas? * * *

His current position is plant manager of the Winnie, Texas plant.

Q. (By Mr. Avedon) And do you know how long he has been

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plant manager? A. At Winnie, Texas?

Q. Right. A. Since February 15, the date we took it over.

Q. And what was his position before that with Union

Texas? A. I don't know. He was with one of the other plants.

Q. Was he a plant manager at one of the other plants?

A. I don't believe he was. * * *

A. If I may answer you this way, it is my understanding that Union Texas had looked in a preliminary sort of way at the purchase of certain assets of this company as early as 1961. * * *

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(The document above-referred to, heretofore marked General Counsel's Exhibit No. 4, was received in evidence.) * * *

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(The document above-referred to, heretofore marked General Counsel's Exhibit No. 5, was received in evidence.) * * *

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Trial Examiner: You are not alleging that this Respondent is bound by that contract? I mean, as a party to the contract.

Mr. Avedon: No, I make no contention that they in any way signed this contract when the contract was originally negotiated.

Trial Examiner: Or that this contract is binding on the Respondent and it is subject to the terms of this contract?

Mr. Avedon: Not in that fashion, no, sir.

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(The document above-referred to, heretofore marked General Counsel's Exhibit No. 6, was received in evidence.) * * *

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(The document above-referred to, heretofore marked General Counsel's Exhibit No. 8, was received in evidence.) * * *

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 9 is received in evidence.)

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Mr. Avedon: At this time General Counsel would like to mark as its Exhibit 13 a certificate of dissolution intent of the charter of the Texas Gas Corporation, which was filed with the Secretary of State of the State of Texas

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December 27, 1962, with a certificate of Crawford C. Martin, Secretary of State.

I would like to offer GC-13 into evidence.

Mr. Sachse has stated that he will not object as to the document, itself. He objects to the relevancy and materiality of it being introduced into evidence, but he does not object to the fact that if someone was called from the Secretary of State's office, or Mr. Elliott was called—

Mr. Sachse: We do not object to the authenticity.

Trial Examiner: I will admit it. General Counsel's Exhibit No. 13 is admitted in evidence for what it's worth.

* * *

Q. (By Mr. Avedon) Mr. Pierce, do you know when the title to the property purchased by Allied Chemical passed to Allied Chemical? A. This is the Winnie plant property?

Q. The Winnie plant property. A. December 31, at 11:59, 1962. * * *

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And basically the property conveyed was the Winnie plant, the Port Neches terminal, and certain gathering and pipe line facilities, is that not correct, as far as the physical plant? A. Generally. I think it's described in one of the exhibits here, I believe. * * *

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Q. (By Mr. Avedon) Now, after the purchase became effective, did Union Texas hire any former Texas Gas Company employees on December 31 or January 1, 1963? A. Yes.

Q. Will you tell me which categories of employees were hired by Union Texas Petroleum either December 31 or January—when did these employees become Union Texas employees? A. We hired a number of the former Texas Gas people on January 1.

Q. All right. A. Effective 8:00 a.m., January 1.

These categories were, if I can best do it this way, by geographical locations, as I am sure you are well aware, they had a group of employees at their home office here in Houston, and they also obviously had a number of people at the Winnie plant, and connected with their pipe

line operations.

Well, on January 1, we took over the actual operation control of all of the assets that we had purchased from Texas Gas, with the exception of the pipe line facilities and the Winnie plant facilities.

Now, for those operations that we took over the active control of and functions, for example, like the sales functions, we hired some of their salesmen.

Their accounting functions of Texas Gas, of course, we took over in our own operation. Our own Accounting Department absorbed that work. And we hired some of those people.

I might say, sir, the thought occurs to me, for example, the accounting people, when I say we hired some of the Texas Gas accounting people, for whatever this might be worth to you, we didn't hire those people as, all of them, at least, as a result of acquiring these assets.

We had originally contemplated—our plans had been, in looking at this purchase that we visualized, that whereas Texas Gas had needed, if my memory serves me right, approximately 250 people all total in their total operation, that we would be able to absorb, run and handle the same facilities with our own people, and that in addition that we would need, or the acquisition of these assets would generate about ninety net new jobs in Union Texas, which

if possible, we were hopeful of filling from the former Texas Gas people.

So on January 1, we started this process, and this, with what you might call the administrative, staff groups, and so on, which was accounting, sales, legal, and so on, all of those functions, again, as I say, with the exception of the pipe line facilities and the Winnie plant operations, we took that over and hired some of those people. Some we, a great number of those people we did not. * * *

Q. Mr. Herrington, what was his job with Texas Gas?

A. He was traffic supervisor, reporting to the Sales Department, which was located at their home office on Bolsover, but as I understand it, he was located, I guess still is, down at the plant.

Q. Did Mr. Herrington become a Union Texas employee? A. Yes.

Q. When did he become a Union— A. January 1.

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Q. And what was his function with Union Texas? A. Basically the same as it was for Texas Gas.

Q. Head of the Traffic Department? A. Yes.

Q. And what is the function of Mr. Herrington's job?

A. Again I am not an expert on these duties.

Q. I mean as, generally, as you can recall. A. As I understand it, it's just what his name implies, he is traffic supervisor, which would mean that he would direct the shipping of the products and so on from the Winnie plant, based on orders from the Sales Department as to where this would go, and so on.

Q. He would designate what trucks or barges it would be loaded in, where the goods were to be shipped, what gasoline or other products were to go to various stations and things of that nature? A. I assume it would operate in this fashion, that the Sales Department would tell him

where the material had been sold, what customers it was to go to, and when it was to be shipped, and it would be his job to see that it was shipped.

Q. Right. And the shipment would actually be made from the Winnie refinery? A. Yes, either there or at the terminal. * * *

Q. How about a Mr. Woolfolk, do you know him? A. Yes.

Q. Did he become an employee of Union Texas? A. Yes.

Q. When did he become an employee of Union Texas? A. January 1, 1963.

Q. Do you know what his position was with Texas Gas? A. He was the head of manufacturing, manufacturing superintendent, I guess.

Q. That would be over the plant manager at Winnie, wouldn't that be correct? A. Yes.

Q. What was his job as of January 1, 1963, when he became a Union Texas employee? A. He became, according to Allied's classification, an engineer in our petrochemicals section.

Q. Would this be a supervisory position or technical position? A. Technical position.

Q. Technical position. A. It's supervisory, too, I guess.
* * *

Q. Effective January 1 of 1963, was there a change in the name of the gas under which the product was marketed? A. Yes.

Q. What was that? A. We started marketing the motor gasoline, I guess is what it is, under the brand name of Texgas, a registered brand name, owned by Union Texas. * * *

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Q. In January of 1963 were the truck drivers operating out of the Winnie refinery hired by Union Texas Petroleum? A. Yes.

Q. How many of them were there? A. Three or four. And if my memory serves me right, a couple of those guys failed to pass the physical.

Q. When were they hired, would you know? A. Shortly—January 1 or thereafter. * * *

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Q. Is there any union at any of the fourteen Union Texas plants? A. At the operating plants, no. We do have unions elsewhere in Union Texas, however. * * *

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Q. (By Mr. Avedon) Could you tell me, then, where you do have unions? I will make it simple. A. Yes, we have a number, for example, up in the Minneapolis-St. Paul area, where the Teamsters Union, we have about six union contracts up in that area.

Q. Is that the plants, themselves, or representing drivers? A. These are at the bulk plants, themselves.

Q. Representing delivery people, would that be correct? A. Yeah. Well, yes, and they also work at the bulk plants.

Q. Well, this would be warehousing and shipping, basically? A. Basically.

You knew as far as contracts that Texas Gas had with any union—what were these contracts that you knew of? A. I knew that they had a contract with the OCAW.

Q. All right. And that represented what? A. A production and maintenance unit.

Q. All right. A. The Pipefitters.

Q. Representing a pipe fitting unit at the— A. A pipe fitting unit. And the Electricians.

Q. At Winnie? A. At Winnie.

Q. Were you aware of any other unions representing any other groups of Texas Gas employees at that time? A. No, other than what I said about the office workers.

Q. The office workers. All right. You knew also that the OCAW unit included the plumbers working at the Port Neches terminal? A. Yes. * * *

Would you tell me what Mr. Quinn's duties between January 1 and February 14 were at the Winnie plant?

A. Well, again, as I understand it, he was not relieved of his other duties, and this was a duty that was added to what I am sure to him was already a full roster of duties.

If I understand your question, now, though, his specific responsibilities with regard to the Winnie plant, and this also applied to the pipe line, was that he functioned as a Union Texas, our liaison man with the independent contractor, Texas Gas Corporation.

Q. Mr. Quinn was there on a pretty much full-time basis, wasn't he? A. Yes, pretty much so. He, as I say, acted as the contact man with us for the contractor. * * *

Q. In this period, January 1 to February 14, did Mr. Quinn have certain requirements of approving vouchers and repairs and things of that nature? A. Only as specified in the operating agreement. * * *

CROSS EXAMINATION

Q. (By Mr. Sachse) Mr. Pierce, while Texas Gas owned and operated the Winnie plant, what position did Mr. Woolfolk have, if you know?

A. He was an engineer in our petrochemical group, reporting to—

Q. No, you say "our petrochemical group." I am talking about before Union Texas bought the plant who was Mr. Woolfolk? A. Oh, I am sorry, sir. Mr. Woolfolk was the manufacturing superintendent, I believe, for Texas Gas Corporation.

Q. Now, he was an employee of Texas Gas Corporation, and would he have been the superior of Mr. Neville? A. Yes, sir.

Q. All right. But, now, after we made the contract, which has been offered for the General Counsel as GC-5, we did not place anyone at that plant to supervise Texas Gas

in the operation of that contract, did we? A. That is correct, we did not.

Q. Neither Mr. Woolfolk nor anyone else? A. No, sir.
* * *

R. T. NEVILLE

* * *

DIRECT EXAMINATION

Q. (By Mr. Avedon) State your name and address for the record, please. A. R. T. Neville, Route 1, Box 175, Winnie, Texas.

Q. Mr. Neville, you are testifying pursuant to a subpoena here, aren't you? * * *

Q. When did you start working there? A. 1945.

Q. And what was your job at that time? A. I was Number 1 operator. * * *

Q. In 1962 by whom were you employed? A. Texas Gas Corporation.

Q. At what location? A. Winnie, Texas, Winnie plant.

Q. And what was your job at the time? A. General superintendent.

Q. What were your duties as general superintendent? A. I had the responsibility and charge of the plants in the Deepwater Terminal.

Q. Now, the Deepwater Terminal was located where? A. Port Neches.

Q. How far is Port Neches from Winnie? A. About thirty-five miles.

Q. About thirty-five miles. And are there pipe lines that run between the two? A. Yes. * * *

Were there any supervisors, of Texas Gas over you in the day to day operation of the plant? A. No.

Q. All right. Who was over you at the Texas Gas Corporation? Who was your superior? A. Mr. R. M. Woolfolk.

Q. And what was his job in December of 1962? A. In charge of manufacturing.

Q. And where was his office located? A. Houston.

Q. Did Mr. Woolfolk, prior to December and in December of 1962, report to the plant regularly? A. No.
* * *

Q. Who handled turnarounds? A. Our maintenance crew with a little outside help.

Q. Did Texas Gas have any office employees at Winnie? Were there people working in the office at Winnie? A. Yes.

Q. Were these employees represented by a union in December of 1962?

A. No.

Q. Were there truck drivers working at Winnie in December of 1962? A. Yes.

Q. Were these truck drivers represented by a union? A. No. * * *

Q. Did Texas Gas have any pipe line unit employees? A. Yes.

Q. Now, what was the work of the pipe line people? What work did they perform? A. They performed gathering and bringing to the plant all the gas that we processed and distribution of the residue gas.

Q. Did these people work in the Winnie plant, itself? A. No.

Q. Were the pipe line people represented by a union? A. No.

Q. When Texas Gas Corporation was operating the plant,

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did Texas Gas Corporation subcontract any of the maintenance work out? A. Some, if the job was larger than our maintenance crew could handle, we subcontracted it.

Q. Who would do the regular maintenance work? A. Our maintenance crew.

Q. What categories of employees would be utilized to do this work? A. Mechanics, pipe fitters, welders, electricians and instrumentmen.

Q. When were you told officially of the sale of the plant to Allied Chemical? A. Around January 1st.

Q. All right. Who told you of this? A. Mr. A. C. Gladden.

Q. What was Mr. Gladden's job at the time? A. Vice-President of the company.

Q. Of Texas Gas? A. Texas Gas Corporation.

Q. Where was he located? A. Houston. * * *

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Q. Did he say anything about anyone from Union Texas coming to the plant? A. Yes, he said Mr. Quinn

would be there, a representative of Union Texas Corporation, and would be in charge of any repair that we had to spend money for, any dollars spent, Mr. Quinn would have to O. K. it.

Q. Did he say anything about, did Mr. Gladden say anything about Mr. Quinn's responsibility? A. He would be responsible as a representative of Union Texas Petroleum, and not to do anything without first checking with Mr. Quinn.

Q. Was anything said about maintenance work? A. Yes, any, other than normal maintenance, that would be checked with Mr. Quinn, too.

Q. How about repair work? A. The same thing on repair, if you had to buy or add any new equipment or any overhauls, why, check that with Mr. Quinn.

Q. Was there any discussion about payment of vouchers? A. Yes, that would be O.K.'d by Mr. Quinn, or in his absence, Mr. Gotcher would try to be there.

Q. When did Mr. Quinn arrive at the plant? A. I don't know the exact date. Somewhere along in the

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first of January. * * *

A. A majority of the time, yes.

Q. When Mr. Quinn wasn't there would someone else from Union Texas be there? A. Most of the time Mr. Gotcher, if Mr. Quinn wasn't there. * * *

Q. Do you know what his job had been before? A. He was superintendent of the Rayne plant in Louisiana. * * *

Q. When Mr. Quinn came to the plant did he have an office or was he given an office? A. Yes, he set him up an office in the plant, an office.

Q. All right. What did Mr. Quinn do once he arrived at the plant there? A. Well, more or less he kind of taken over because he was a representative of the company that had bought it out,

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Union Texas, and, of course, we expected him as the man in charge, and I tried to notify him or go to him with anything other than normal operation, and he gave a good many orders to most of the people.

Q. Would you tell me things of what nature he gave orders about? A. Well, he gave orders around in the office, he gave orders to, more or less, to the man in charge of operation.

Q. Who would that be? A. Mr. Kruger.

Q. All right. A. And Mr. Cating, the personnel man at the plant, why, he also worked with Mr. Quinn. * * *

Q. (By Mr. Avedon) Did Mr. Quinn ever give you any instructions? A. Some along, yes.

Q. Did Mr. Gotcher ever give you any instructions? A. No. * * *

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Q. Do you know Mr. Herrington? A. Yes.

Q. Where was he located? A. At the Winnie plant.

Q. Prior to the purchase of the plant by Union Texas, who did he work for? A. Texas Gas Corporation.

Q. And what was his job? A. Traffic manager.

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Q. And his duties as traffic manager were what? A. In

charge of the trucks and moving products in and out of the plant, trucks and barges.

Q. Was he under your supervision? A. Partially. The Sales Department's in Houston and my supervision. * * *

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After January 1, where was Mr. Herrington after January 1, 1963, where did he work? A. At the plant office.

Q. He stayed at the plant office? A. Yeah.

Q. Did his job change in any way? A. No. * * *

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Q. And would Mr. Herrington give instructions to any of the employees at the plant? A. To the rackmen who did the loading.

Q. What would these instructions involve? A. In what product to load. He also gave instructions to the terminal supervisor on loading out product. * * *

Q. (By Mr. Avedon) Would he give instructions of any other nature? A. No, I don't believe so. * * *

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Q. Did Mr. Herrington ever give instructions to shift foremen? * * *

A. By memo, yes. * * *

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The Witness: One copy would come to the shift foreman, one copy to the operating superintendent, and one to me.

Q. (By Mr. Avedon) Were these memos continued in effect after January 1, 1963? A. Yes.

Q. Prior to January 1, 1963, from whom did you take your orders? A. R. M. Woolfolk.

Q. After January 1 of 1963 from whom did you take your orders about problems at the plant? A. From Mr. Carl Gladden and Mr. Quinn, both.

Q. From whom did you get most of your instructions or orders? A. I would say from Mr. Quinn.

Q. Where was Mr. Gladden all during this time? A. Houston office.

Q. Did he ever come out to the plant? A. No.

Q. After January 1 of '63? A. No.

Q. During this period, January 1 to February 14, 1963, did you ever seek to purchase equipment? A. Yes.

Q. Did you ever check with anybody? A. Checked with Mr. Quinn.

Q. Why was that? A. Mr. Quinn had to O. K. all the money spent and any equipment was money spent.

Q. How about maintenance work, did you have to check with anyone at that time? A. Anything more than normal maintenance, why, I had to check that with Mr. Quinn.

Q. And did you check with Mr. Quinn? A. Yes.

Q. Would he give approval? A. Yes.

Q. How about vouchers, did they require to be approved by someone? A. By Mr. Quinn or Mr. Gotcher, if Mr. Quinn wasn't there.

Q. And what would these vouchers involve? A. Anything purchased.

Q. And this, of course, I am referring, all these questions refer to this period, January 1 to February 14, 1963. I hope you realize that. A. Yes.

Q. All right. Did you ever seek to buy equipment during this period? A. Yes, especially one occasion I remember on retubing a bundle in an overhead condenser, there was the question of whether to retube or just replace some tubes. So I checked that with Mr. Woolfolk and he referred me to Mr. Quinn. I checked with Mr. Quinn and he O. K'd it. We went ahead and had it retubed. * * *

Q. Did an occasion occur with respect to a pump on a products line breaking down? A. Yes.

Q. When was that? A. I don't remember. That was in, sometime in February, I believe it was.

Q. All right. What was the nature of the breakdown? What year was that? A. '63.

Q. Was this before or after the shutdown of the plant? A. It was before the shutdown of the plant.

Q. In other words, before February 14? A. Yes.

Q. All right. What was the nature of the breakdown, would you know? A. The pump had gone bad. The impeller had eaten up the thrust bearings, and we had to have a bunch of repair done

on it.

Q. Did you seek approval of anyone before repairs were to be made? A. Yes.

Q. From Whom? A. Mr. Quinn.

Q. What were you told? A. He O. K.'d it. We sent it in and got it fixed. * * *

Q. (By Mr. Avedon) I say, were you given any instructions about the hiring of new personnel at the plant? A. Yes.

Q. When was that? A. That was right after January 1st.

Q. By whom were the instructions given? A. Mr. Gladden told me—my secretary left about that time. And he said I couldn't hire another one or any new personnel without checking with Mr. Quinn, getting an O. K. from Texas Petroleum.

Q. That is Union Texas Petroleum you are talking about? A. Yes.

Q. Did you talk to Mr. Quinn? A. Yes.

Q. What did you say to Mr. Quinn and what did Mr. Quinn say to you? A. I told Mr. Quinn about it and suggested we try to make out with the girls we had, and he said "That's fine, go ahead." * * *

Q. (By Mr. Avedon) During this period, was any work being done on compressors? A. Yes, we—we started to overhaul a compressor.

Q. When did you start overhauling a compressor? A. Sometime in the first of February.

Q. Did you have any discussion with Mr. Quinn about these compressors? A. Yes.

Q. Tell me what that was. A. He suggested we hold up on them until later, and he would give approval, if we went ahead and overhauled, so he did later on, and we overhauled the compressors. * * *

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Q. What caused the delay? A. I really don't know, except we was waiting on time, I guess, to see whether he wanted to go that way or try to do it with our people.

Q. When you say "he," who do you mean? A. Mr. Quinn.

Q. In other words, was the delay caused by Mr. Quinn? A. Yes.

Q. And did he ultimately change or were you ultimately given the go-ahead? A. Yes.

Q. Who gave you this go-ahead? A. Mr. Quinn.

Q. And was the work done then? A. Yes.

Q. And when was this work done? A. I believe it continued on through February into March. We had two compressors completely overhauled.

Q. Had the work started prior to February 14?

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A. I don't remember.

Q. You don't know whether it started prior to or after the shutdown? A. No, I really don't.

Q. (By Mr. Avedon) When were you terminated? A. May 15.

Q. Of this year? A. Of 1963, yeah.

Q. Did you hear from Mr. Woolfolk on February 14 of 1963? A. Yes.

Q. Would you tell me what time it was and what the circumstances were? A. Mr. Woolfolk called me at home about 6:00 o'clock, 6:00 a.m., on the morning of the 14th, and asked me to get my supervisors and all personnel, supervising personnel, and office and engineers, in my office for a meeting at 8:00 o'clock.

Q. Were any instructions given about maintenance people? A. Yes, he said for me to call Mr. Ellis, have Mr. Ellis to have the maintenance people to stand by in the shops, and

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don't start any job until further notice.

Q. Did you give any instructions to Mr. Ellis? A. Yes, I called Mr. Ellis at home and told him.

Q. What were these instructions that you gave Mr. Ellis? A. Sir?

Q. What instructions did you give Mr. Ellis? A. To get down to the plant and when the people would come in, have them stand by in the shops and don't start a job.

Q. Was there a meeting that morning? A. Yes, at 8:00 o'clock that morning.

Q. Who was present at this meeting? A. All supervisors and office personnel and Engineering Department, Mr. Woolfolk, Mr. Sutherland and Mr. Quinn. * * *

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A. Well, I opened the meeting, turned it over to Mr. Woolfolk, and he talked a while.

Q. What did Mr. Woolfolk say? A. Letting them know that the plant was going to be shut down, and that they would all be taken care of.

Q. Who was he talking to? A. He was talking to the group that was in my office. * * *

What else did Mr. Woolfolk say? A. Well, I don't exactly remember his remarks. Then he turned the meeting over to Mr. Sutherland.

Q. What did Mr. Sutherland say? A. Mr. Sutherland explained to each and every one how that the company

had taken over that day, and the plant would be shut down and there would be extensive repair done, and all the group that was present would be taken over that afternoon on the Union Texas Petroleum payroll at 4:00 o'clock, at their same position and same salaries.

Q. Was anything said about what time the plant was to be shut down by?

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A. Yes, Mr. Sutherland asked me how soon I could get down. And could I get it down before noon, and I told him no, I couldn't, it would be at least 2:00 o'clock.

And so he said "Well, send all maintenance home, have them check out, and they will be paid for the day."

So I give Mr. Albritton instructions to notify Mr. Ellis to send all maintenance home, have them to check out.

Q. Who was Mr. Albritton? A. Mr. Albritton is my assistant, assistant superintendent.

Q. Assistant superintendent? A. Yes.

Q. Were the maintenance people sent home? A. Yes.

Q. On whose instructions were they sent home?

A. Mr. Ellis gave them the instructions.

Q. From whom did you receive your instructions to send them home? A. From Mr. Sutherland.

Q. Who gave instructions on how the plant was to be shut down? A. I and Mr. Woolfolk talked that over, how to shut the plant down, and the decision made to shut one unit down at a time, and then send those operators out, continue until we got both plants down, leave the compressor room running, one boiler in service, and a loading rack in service.

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Q. From whom did you receive orders to shut the plant down? A. Mr. Sutherland.

Q. And in working out all of these details, whose instructions were you following? A. I worked that out with Mr. Woolfolk. * * *

Q. (By Mr. Avedon) Were you placed on the Union Texas payroll? A. Yes.

Q. As of when? A. February 14, about 4:00 o'clock.
* * *

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Q. Were all of the supervisors at the plant put on the Union Texas payroll? A. Yes.

Q. How about the office employees? A. Yes, they were taken over.

Q. Was the entire plant completely shut down? A. No.

Q. Who told you or pursuant to whose instruction were certain portions left open? A. By Mr. Woolfolk.

Q. Did he tell you what areas to leave open? A. Yes.

Q. What areas were to be left open? A. The compressor room, one boiler in service, steam boiler, and the loading rack in service. * * *

Q. Were vessels depressurized and drained?

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A. Not then, no.

Q. This is on February 14. A. Yes.

Q. In a normal situation where a piece of equipment was taken out of operation, what would be—what would happen to it? A. For repair?

Q. Right. A. You would depressure it and drain it and drain it if it was a vessel.

Q. How long would it take to shut a plant down when you drained and depressurized the equipment? A. At least forty-eight hours.

Q. How long did it take to shut the plant down on February 14? A. Until 2:00 o'clock in the afternoon.

Q. And you started at what time? A. Started about 9:00 o'clock.

Q. All right. How long would it take to start a plant back into operation after it was completely -- the equipment was drained and depressurized? A. Oh, at least forty-eight hours.

Q. At least forty-eight, possibly -- A. Longer, yeah.

Q. Possibly longer. How long would it take to put the plant back on stream on the basis of the way the plant was shut down February 14? A. About eight hours. * * *

Q. (By Mr. Avedon) After the shutdown, what happened to the production and maintenance employees, as the plant was being shut down? A. They were all laid off.

Q. Were any employees working in the plant after the shutdown of February 14? A. No. * * *

Q. The supervisors were doing what after February 14? What was their job? A. They was operating the units that was in service.

Q. Prior to the shutdown, who had been operating these units? A. Our regular operators. * * *

Q. What kind of work schedules did the shift foremen work in the first few days after the shutdown?
A. Twelve-hour shifts.

A. Oh, four Union Texas employees was brought into the terminal.

Q. They were brought in from where, you know?
A. I don't know. Somewhere on the system.

Q. Had these four employees ever worked at the Winnie plant before? A. No.

Q. Prior to this telephone call of February 14, had you been given any prior notice that the plant would be shut down that day? A. No.

Q. Were any Pullman cars brought into the plant?
A. Yes.

Q. When was that? A. I believe that was on February 14 or the 15th.

Q. How many were brought in? A. Two.

Q. Had Pullman cars ever been brought in the plant before? A. Yes.

Q. When was that? A. During the strike in 1961, I guess it was, or '60. * * *

Q. (By Mr. Avedon) Were you told why the Pullman cars were being brought into the plant? A. Yes.

Q. By whom? A. By Mr. Woolfolk.

Q. What did Mr. Woolfolk say to you? A. They were being brought in to house employees who would be working in the plant. * * *

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Q. (By Mr. Avedon) Were other guards used in the area? A. Yes.

Q. What were they used for? A. In the field, I suppose watching pipe lines, they was patrolling in company cars. * * *

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Mr. Avedon: First of all I want to know if he was ever told by anybody why the guards were to be used, and then if he knows, I will ask him who.

Trial Examiner: I will permit it.

A. Mr. Shettle told me.

Q. (By Mr. Avedon) Who? A. Mr. Ed Shettle.

Q. Who is Mr. Ed Shettle? A. Manager of the pipe line.

Q. What did he tell you? A. That he had guards patrolling the field in his company cars.

Q. When were these guards brought in? A. The 14th or the night of the 14th.

Q. All right. Prior to February 14 had guards been stationed at the plant? A. No.

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Q. On February 14, were you told anything about allowing calls into and out of the plant? A. Yes, on February 14, all calls were shut off by Mr. Quinn in and out of the plant, only by his approval.

Q. Who told you this about the calls? A. Mr. Quinn.
* * *

Q. (By Mr. Avedon) On February 14, was anything said about workers being allowed in the plant? A. Yes.

Q. Who said it? A. Mr. Quinn.

Q. What did he say? A. Don't allow any of the boys to come back in the plant. If they have any personal belongings, why, have someone to bring it outside to them.

* * *

Q. (By Mr. Avedon) All right. Did any of the supervisors to your knowledge give any notice to the employees about—A. Prior to February 14?

Q. Right. A. No.

Q. After February 14, did new people start arriving at the plant? A. Yes.

Q. When was that? A. The night of the 14th, I believe.

Q. How many arrived? A. I believe about fourteen.

Q. And did they have anything with them? A. I saw some luggage. * * *

Q. Did you speak to Mr. Quinn about the new men, or anyone? A. When I saw the men, yes.

Q. All right. What did you say to Mr. Quinn and what did Mr. Quinn say to you? A. I asked Mr. Quinn what they were going to do, and he said they will be brought in as surplus people, to be brought in to operate the plant, what we had running.

Q. Were these men put to work? A. Yes.

Q. What jobs were they given? A. Training with our supervisors.

Q. To do what? A. On the operation of the plant, what we had operating, and the terminal. * * *

Q. You said fourteen men arrived that evening. After that

time did any people arrive? A. Yes, later on there was some more people came in.

Q. All right. Over what period of time did the men arrive? A. I believe up through the 16th, maybe about the 16th they came in.

Q. This would be over the period of Friday, the 15th, and Saturday, the 16th? A. Yeah.

Q. How many more people arrived at the plant? A. Around thirty or thirty-five.

Q. Is this in addition to the fourteen that you have already mentioned? A. Yes.

Q. In other words, you are talking about fifty arrived? A. Yes.

Q. Did they have luggage with them? A. I saw some luggage.

Q. By Sunday morning, how many people came into the plant, new people had been brought into the plant? A. Around thirty, thirty-five.

Q. Is that a total? A. No, a total of about forty-five, fifty. * * *

Q. Do you know from where they came? A. No.

Q. On Sunday night, were these same fifty people still in the plant? A. No, they started leaving.

Q. How many left. A. The total that came in on the weekend.

Q. Did all of the people who came, including those who came on February 14th, leave? A. No, the people that came in on the 14th stayed, or that amount of people stayed, twelve or fourteen of them.

Q. In other words, fourteen stayed? A. Yes, I believe that is the number.

Q. And how many left? A. Thirty, thirty-five.

Q. When did they start leaving? A. Sunday afternoon.

Q. When had they all left by? A. Monday.

Q. Did you have any conversation with anyone from Union Texas about the people coming and going? A. I talked to Mr. Sutherland about it.

Q. What did you say to him? When was this? A. That was Sunday.

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Q. What did you say to him and what did he say to you? A. I asked him why they were leaving and he said it was a mix-up, they just got—somebody jumped the gun and got them in too early, so they were sending them out. They might get into trouble by having the men there so early.

Q. Did Mr. Sutherland say what the men had been brought in for? A. For operation of the plant.

Q. Was this as part of this same conversation? A. Yes.

Q. After February 14, did certain portions of the plant continue to operate? A. Yes.

Q. Which portions was that? A. The compressor room, boiler and loading rack and terminal. * * *

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Q. (By Mr. Avedon) Prior to February 14, had any

arrangements been made, to your knowledge, for any major maintenance work? A. No preparations, no.

Q. Had any equipment been brought in for any maintenance work— A. No.

Q. —prior to February 14? A. No.

Q. Had any material or parts been brought into the plant? A. Not to my knowledge.

Q. You were in day-to-day operation of the plant, weren't you? A. Yes.

Q. And had any material been brought into the plant for new construction? A. No.

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Who performed this work? A. Fluor Corporation,

Q. And what type of repairs were involved, what type of work was involved in the beginning? A. Well, it was quite a bit. Automation work, replace piping, retrain towers, changing out bundles, just quite a bit of work all over the plant.

Q. Changing of bundles, had that been done in the past? A. Occasionally, yes.

Q. Who had performed this work? A. Our maintenance crew.

Q. Was any work done on a compressor by Fluor? A. Yes.

Q. Had any work been done on compressors in the past? A. Yes.

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Q. Who had done this work in the past? A. Oh, our maintenance crew and sometimes a subcontractor.

Q. Did you ever speak to Mr. Sutherland about tests

for employees? A. Oh, yes, I talked to Mr. Sutherland. We talked about—

Q. When was that, about? A. Somewhere in April, I believe, first of April.

Q. All right. What was the conversation?

A. That all new applicants would be given a physical and a test. That would apply to everyone that is going to work for Union Texas Petroleum.

Q. What else did he say? A. That would also be the boys, the union boys, that were laid off, and that that probably would eliminate a whole lot of them.

Q. Did he say what kind of tests he was talking about? A. I didn't see the tests, myself. I don't know.

Q. Did he describe what tests? Did he mention the type of tests he was talking about? A. No, it was a mental test of some sort. I don't know.

Trial Examiner: Is that what he said, it was a mental test of some sort?

The Witness: He didn't say some sort. It was a psychology or mental test. * * *

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Q. (By Mr. Avedon) Did you ever have a discussion with Mr. Sutherland about unions at other Union Texas plants? Just answer yes or no. A. Yes.

Q. When was that? A. Somewhere along about in April, first of April, he just told me he didn't have unions in other plants. * * *

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Q. (By Mr. Avedon) Who said that? A. Mr. Sutherland. Now, that is Union Texas Petroleum plants.

Q. Was anything else said at this time? Have you recounted the whole conversation? A. No, I don't remember the whole conversation.

Q. As far as you can recall, do you recall anything else said at that time? A. No, I don't believe so.

Q. In other words, as far as you recall, that was all that was said at that time? A. Yes, we had more conversation, but I don't remember what it was all about. * * *

A. It was asked in this meeting on February 14, if the men asked for letters of recommendation, would we be allowed to give them.

Q. Who asked that question? A. Mr. Albritton.

Q. To whom? A. Directed to Mr. Sutherland.

Q. What did Mr. Sutherland say? A. He said yes, if they ask for recommendations, a letter of recommendation, go ahead and give them the letter of recommendation.

Q. Were letters of recommendation written? A. Yes.

Q. When were these letters written?

A. Right after that, about, somewhere around the 20th, I guess, we started writing them, somewhere along there.

Q. By whom were the letters of recommendation written? A. Each department head recommended his own men, except the personnel man, he helped write a lot of them.

Q. Who signed these letters of recommendation? A. I did, nearly all of them. Not all of them. * * *

A. That there was objections with Union Texas Pe-

troleum's Legal Department on this letterhead, and to go back to our letterhead. So we did. We went back to the—I say our letterhead. Texas Gas Corporation letterheads.
* * *

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Q. I believe you stated you were terminated May 15?

A. Yes, sir.

Q. Who terminated you? A. Mr. Sutherland. * * *

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Q. Now, before January 1, were there any staff meetings at the plant? A. Yes.

Q. How often were these held?

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A. We tried to hold them once a week.

Q. What was the purpose of them? A. To brief—all department heads to brief me and brief Mr. Woolfolk on what was being done, had been done, or we planned to do.

Q. Did Mr. Woolfolk have an office at the plant? A. No.

Q. Where was his office? A. Houston.

Q. At any time did Mr. Woolfolk have a regular practice of inspecting the plant? A. When he came down, yes, he inspected the plant.

Q. Before or after the staff meeting? A. Usually after the staff meeting.

Q. Was there any person in the Houston headquarters of Texas Gas Corporation who assumed responsibility over you for the operation of the Winnie plant? A. Other than Mr. Woolfolk?

Q. Anybody. A. Mr. Woolfolk did.

Q. Was there anyone else? A. No.

Q. Before January 1 what instructions, if any, did you get from Vice-President Gladden concerning the operations of the plant?

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A. None.

Q. What were his duties for Texas Gas Corporation?

A. He was vice-president, but his duties I don't know. All departments were under Mr. Gladden, I know that.

Q. Do you know whether or not he was qualified to, or whether or not he was familiar with the functioning of the Winnie refinery? A. No, he wasn't familiar with it. * * *

Let's go to the period after January 1, 1963, and I would like to ask you some questions about that. What persons were still on the payroll of Texas Gas Corporation at Houston, at the Houston headquarters? A. There weren't very many. Mr. Gladden—after January 1st?

Q. Yes, sir. A. Mr. Gladden, Mr. Homer Martin.

Q. Who was he? A. He was head of the Accounting Department. And Earl Elliott and their secretaries, I think, is what was left.

Q. All right. How were they occupied? A. Cleaning up the responsibility of the Texas Gas Corporation, I suppose. * * *

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Q. (By Mr. Ladwig) What type of work do you know that, if any, that they were doing after January 1 in the Houston office, these three officials? * * *

The Witness: Well, Mr. Earl Elliott, in the Legal Department, why, he was working with me on cleaning up several things, and Mr. Homer Martin was working with me on cleaning up some outstanding invoices around the area there that hadn't been taken care of.

Q. (By Mr. Ladwig) When you used—

Trial Examiner: Well, I will allow the record to stand as it is, in view of the clarification concerning his

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working relationship with Mr. Elliott and Mr. Martin.

Q. (By Mr. Ladwig) Will you explain what you meant by the words cleaning up? A. They had outstanding obligations, invoices and some obligations with the OCAW group that Mr. Elliott was working with and cleaning up, and he was also taking care of these recommendation letters that we were giving the people. Mr. Elliott was delivering those or seeing they were delivered * * *

Q. (By Mr. Ladwig) Mr. Neville, I was talking about the period from January 1 to February 14. There were no letters of recommendation to be given in that period. A. No, that was after the 14th. * * *

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Q. Were there any visits to the plant by any of the Houston officials of Texas Gas Corporation? A. No.

Q. Did Mr. Gladden assume the responsibility over the plant's day-to-day operations as Mr. Woolfolk had done before January 1? * * *

A. No. * * *

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Q. (By Mr. Ladwig) What instructions did you receive, if any, from Mr. Gladden after January 1, regarding the operation or maintenance at the plant? A. Really none, because right after January 1st, Mr. Gladden called me and told me to check with Mr. Quinn on everything because he was representative of Texas Petroleum, and to check with him on everything to be done, and on products, if we wanted any change, why, do whatever he said about it. * * *

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Q. To your knowledge what service was performed in operating the plant by the Houston office of Texas Gas Corporation after January 1? A. There was none.

Q. When the truck drivers were placed on the Union Texas payroll, did you know when they were sent to take physical examinations? A. Right after January 1st. I don't remember the date.

Q. Were they required to take mental examinations? A. Not that I know of.

Q. When were the pipe line employees told that they would be taken over by Union Texas? A. Around February 10 or 11.

Q. Do you know what day of the week it was? A. No.

Q. When were they given physical examinations, if you know? A. I know it started about that time and ran for about a week.

Q. Were they given mental examinations? A. Not that I know of.

Q. Do you know a Mr. Duhon? A. Francis Duhon?

Q. Yes. A. Yes.

Q. Who was he?

A. Who was Duhon?

Q. Yes. A. Chief Clerk of the Accounting Department in the Winnie plant office.

Q. What was his title in the period from January 1 to February 14, 1963? A. Chief Clerk.

Q. What was his title after February 14? A. Chief Clerk.

Q. All right. As Chief Clerk, how many people were working under him? A. Three.

Q. What were their classifications? A. Typists and PBX operator.

Q. Do you know whether the janitor took instructions from him? A. Yeah, I beg your pardon, I forgot the janitor. That is four. He did take instructions from him.

Q. What authority did Mr. Duhon have over these four employees? A. They were strictly working under Mr. Duhon.

Q. Did he have any authority with reference to how much they were paid? A. Nothing, only making recommendations to me.

Q. What other matters did he have some authority, if any,

concerning his being over them? A. He interviewed the applicants and recommended any dismissal.

Q. What weight, if any, did you give to his recommendations concerning employees' status or their working

conditions? A. I usually investigated, talked to him and talked to the employee. If it was justified, I went along with Mr. Duhon.

Q. What authority did he have in the direction of their work? A. He had full authority.

Q. Did he have any authority in connection with giving them leaves of absence? A. Yes.

Q. He could do that on his own authority? A. He could do that on his own authority.

Q. These answers that you gave concerning his authority, did they change at all before or after February 14? A. No.

Q. When did he go to work, if he did, for Union Texas? A. February 14.

Q. In testifying yesterday, what did you mean by normal maintenance, when you testified that you had to check with Mr. Quinn about everything except normal maintenance? A. Normal maintenance on taking care of light repair, on

instruments, charting valves in compressors, packings on pumps, changing out small connections, light repair.

Q. Did you have the necessary supplies and equipment for making those light repairs? A. Yes, most of it.

Q. What size purchases had to be approved by Mr. Quinn or Mr. Gotcher between January 1 and February 14, 1963? A. Any size, any money spent.

Q. During that period of time, did you know what the operating agreement said, if anything, concerning that? A. No, I did not know about it.

Q. Did anyone tell you what your authority was under the operating agreement? A. No.

Q. How many filling stations were supplied with gasoline by the plant during the period from January 1 to February 14? A. I don't know for sure. Something over a hundred.

Q. How many after February 14? A. The same amount, as far as I know. * * *

Q. Has there been enough gasoline there at the plant to supply these filling stations and other customers with gasoline after the February 14 partial shutdown?

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A. For a period of time I had the storage full, but after a time, we had to start trucking in, buying gasoline.

Q. Where did the gasoline come from? A. Well, the Sales Department handled it, but it came from Magnolia and a plant over here at Houston.

Q. Was it Signal Oil? A. Signal Oil.

Q. How was the gasoline received from these two suppliers after February 14? A. By truck.

Q. So the gasoline was trucked in there and stored? A. Yes.

Q. And then how was it sent out when you supplied the customers? A. Trucked out.

Q. In the past has the plant been shut down for turnaround or repairs? A. Not the entire plant, no. * * *

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Q. By turnaround you mean a major overhaul? A. Yes.

Q. Turnaround is an expression used in the oil industry to indicate the major overhauls? A. Yes.

Q. Have there been major repairs there at the plant made before equipment was shut down? A. No, not on our operating equipment. It has to be shut down. * * *

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VOIR DIRE EXAMINATION

Q. (By Mr. Sachse) Would you please tell me if you have ever worked in a petrochemical plant? A. No.

Q. Would you please tell me if you have ever seen a gasoline plant converted to a petrochemical plant? A. No. * * *

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Mr. Sachse: All right. Then may I ask this:

Q. (By Mr. Sachse) Have you ever shut down the whole of the plant for general repairs throughout the plant? A. No.

Q. Then may I ask this, were general repairs made throughout this plant after the shutdown on February 14? * * *

I mean, this is a subject for cross examination as to what occurred after February 14.

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I think he is going beyond, testing the man's knowledge of what occurred in the past, showing his knowledge to give an opinion answer.

Trial Examiner: Well, I will permit this question because it defines the question, itself, since he's being asked what the nature of this shutdown after February 14 is, it's necessary to know generally what kind of a shutdown it was after February 14, as compared to the previous experience.

Mr. Sachse: Right, sir.

Trial Examiner: Do you have the question? A. May I answer it this way, when I shut the plant down on February 14, it could have been a temporary shutdown, could have put the plant back on that night, or in the next fifteen or twenty-four hours, but following that, when we started depressuring and draining, then I knew then it was for an indefinite shutdown, but not on the 14th.

Trial Examiner: And when did the depressurization and draining take place?

The Witness: I believe we started the next day on it.

Trial Examiner: On the 15th?

The Witness: 15th, we will say the 15th or 16th.

Trial Examiner: Now, does this answer of the witness answer the question that you wanted?

Mr. Ladwig: Yes, it did. He did answer the question.

May we proceed?

Trial Examiner: Is there an objection to this now?

Mr. Sachse: No, I have no objection to that.

Mr. Ladwig: All right.

Trial Examiner: Please proceed.

Q. (By Mr. Ladwig) You testified about some employees coming in from out of town on February 14, is that right? A. Yes.

Q. How many of them went to work on February 14 that you know about? A. Actually worked, I don't think any of them did.

Q. All right. How many supervisors, if any, went to work on February 14? A. About eight of them, I believe.

Q. Then on the next day, Friday, February 15, how many people were doing work in the plant? And I am now referring to what I might refer to as bargaining unit work, work that was done by employees represented by OCAW.

Trial Examiner: Do you understand the question? A. I would like for you to repeat that question.

Q. (By Mr. Ladwig) Do you understand what I mean by bargaining unit work? A. Yes.

Q. People who were doing operating, production and

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maintenance, people who were represented by OCAW.

Trial Examiner: What is the question, how many employees?

Q. (By Mr. Ladwig) How many employees and supervisors were working on February 15, doing such bargaining unit work? A. About ten of them.

Q. Ten outside employees? A. No, our supervisors.

Trial Examiner: All supervisors?

The Witness: All supervisors.

Trial Examiner: You previously testified about eight.

The Witness: But that was in operation, and then we had the two in maintenance.

Q. (By Mr. Ladwig) All right. And how many new employees to the plant that came in on February 14?

A. There was ten of them that stayed at the plant.

Q. All right. Now, you testified about some additional, thirty or thirty-five, employees coming in that week end, is that right? A. Yes.

Q. Now, at the time that these additional ones came in, had the plant been shut down in such a way that it could be

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started back up briefly or had it been shut down for an indefinite period? A. That week end it had been shut down, it looked like, indefinitely.

Q. Did they start doing this before or after these thirty or thirty-five employees were sent away? A. Draining the vessels and depressuring?

Q. Yes. A. Oh, they started that on the 15th and 16th.

Trial Examiner: Was that after the additional thirty to thirty-five employees from out of town had been sent away or before, while they were still on the premises?

The Witness: That was just before they came in. They came in—no, they came in on the 16th and 17th.

Trial Examiner: They came in on the 16th and 17th. After the depressurization and draining had started?

The Witness: Had started, yes.

Q. (By Mr. Ladwig) What shift were the supervisors working on beginning February 14? A. Twelve-hour shifts.

Q. How long were they off? A. Twelve hours.

Q. So that was twelve-hour on, twelve-hour off shifts?

A. Yes. * * *

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Q. How long did the supervisors work on that shift?
A. Just a few days.

Q. How long would you say? A. Not over ten days training the new people. * * *

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Q. You mentioned two Pullman cars that were brought in. What day were they brought in? A. 14th.

Q. What was the capacity of those Pullmans, of each of those Pullman cars? A. About twenty people could be taken care of in each car, I believe.

Q. Does the company have any of its own houses?
A. Yes.

Q. Where are they located? A. Across the street from the plant.

Q. How many, if any, people could have been accommodated at that time in the company houses? A. I think at that time we had four two-bedroom houses empty, that would accommodate quite a few men for sleeping.

Q. Concerning your testimony yesterday about Mr. Sutherland telling you that the tests would probably eliminate a whole lot of the former employees, did he make that comment at the same or in a different conversation when he commented that all other Union Texas plants were non-union?

Trial Examiner: Hold your answer.

Mr. Sachse: Objection. I think the testimony yesterday was the witness said the examinations would eliminate a

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lot of applicants, and it was not related to the former employees of Texas Gas, and I don't think the question is proper.

Trial Examiner: I will sustain the objection as to form. The question is too complicated in phraseology.

Q. (By Mr. Ladwig) Would you testify what Mr. Sutherland said, if anything, about the elimination of anybody?

A. In our conversation at that time Mr. Sutherland said that he thought that this test would eliminate some people.

Trial Examiner: Is that the substance of his statement? Did he use the term "some people"?

The Witness: Yes, actually Mr. Sutherland and I were talking about it, and discussing this, and I, as well as he, figured it would eliminate people that couldn't pass the test.

Trial Examiner: Yes. Well, the purpose of my question is just clarification. You are testifying now as to what Mr. Sutherland said?

The Witness: Yes.

Trial Examiner: All right.

Q. (By Mr. Ladwig) All right. Would you tell more in detail about this conversation and who you were talking about? A. Well, we were actually talking about the people who were laid off.

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Q. Now, the people who were laid off, which employees were you referring to? A. The union boys.

Q. All right. Did he also make any kind of comment about the union or non-union status at other Union Texas plants? A. He said they had no unions at any of the Union Texas Petroleum plants.

Q. Now, my question is did he make these two comments about eliminating people and about no union at other plants in the same conversation or in different conversations? A. Different conversations. * * *

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CROSS EXAMINATION * * *

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A. My checks were still coming from Texas Gas.

Q. Until what time, sir? A. Until February 14th.

Q. Now, after February 14, from whom did your checks come?

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A. They were still Texas Gas Corporation checks.

Q. Until what time? A. No, I beg your pardon. I am wrong. They were Union Texas Gas after that. The next check I got was Union Texas Petroleum.

Q. Yes. Now, as I understand it, you still got orders from Mr. Gladden after January 1st, 1963 about this plant, did you not, Mr. Neville? A. No orders from Mr. Gladden came to operation or maintenance. I only briefed Mr. Gladden every morning on the conditions of things. But he issued no orders on the product or maintenance.

Q. Now, how did you brief Mr. Gladden each morning? A. How much gas I passed, what the production

was, and if I had anything to repair or shut down, or anything like that, why, I reported to Mr. Gladden.

Q. Did you make these reports orally or in writing?
A. Orally.

Q. By telephone or in person? A. By telephone.

Q. And you did this every morning from January 1st through February 14, is that right? A. Only when I could catch him in the office.

Q. Well, sir, you said you briefed him every morning.

What do you mean by every morning? A. Every morning I could get hold of him during the working days, five days a week.

Q. Oh. Well, then, that was regularly done, was it?
A. I say when I could catch him. So many times Mr. Gladden wasn't in the office.

Q. After February 14, I assume you did discontinue this briefing to Mr. Gladden, is that correct? A. Yes.

Q. You understood on February 14 that after 4:00 p. m. of that day the plant supervisors would be working for Union Texas? A. Yes.

Q. And so you understood that before 4:00 p. m. of that day the plant supervisors were working for Texas Gas? A. As far as I knew.

Q. Yes, sir. Insofar as you knew, you were working for Texas Gas until 4:00 p. m. on February 14, 1963, that's correct, isn't it? A. Yes. * * *

Mr. Sachse: I would like to know, sir, whether it is

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the General Counsel's position that discrimination was charged against, or is charged against, Allied Chemical in connection with the employment of people at the Winnie plant subsequent to February 14, 1963?

Mr. Avedon: I think I would like to answer it this way:

I don't make any contention that there were specific acts of individual discrimination in that certain employees were not hired after, by Union Texas Petroleum, after February 14, 1963. I think that what we are dealing with is a blanket charge of unlawful discrimination in that these employees were terminated by Union Texas, as we contend, on this date. * * *

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Mr. Avedon: Yes, sir. I don't make any contention that one employee was specifically discriminated against in regard to hire, let's say, in April or May, or something of that nature, if that in any way clarifies it. * * *

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Mr. Avedon: My contention is when they brought people from other Union Texas plants in, that shows an indication to operate the plant as a non-union plant.

What I mean to indicate, if they hired new people, let's say, I understand they brought new people in, hired new

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people on a local basis possibly, I am not sure of this information, sometime in April or May, something of

that nature, I make no contention that any new hires that might have been made in April or May, long after this shutdown, or partial shutdown, that these people were picked on a discriminatory basis.

R. T. NEVILLE

CROSS EXAMINATION (Continued)

Q. (By Mr. Sachse) Mr. Neville, who is Mr. Albritton?

A. He was my assistant.

Q. Who is Mr. M. F. Kruger?

A. Operating foreman.

Q. Who was Mr. W. B. Neidert?

Mr. Avedon: May we establish when this was, please?

Mr. Sachse: I am just asking who these people are.

Mr. Avedon: At what period of time?

Mr. Sachse: Well, let's say in the month of January, 1963.

Q. (By Mr. Sachse) Are your answers still the same?

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A. Yes.

Q. Now, how about Mr. W. B. Neidert, N-e-i-d-e-r-t?

A. Plant engineer.

Q. And Mr. Jesse Cating? A. Personnel director.

Q. At the Winnie plant? A. Yes.

Q. Were all of these people paid their salaries during the month of January and through February 14 by Texas Gas? A. Yes. * * *

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(The document above-referred to, heretofore marked Respondent's Exhibit No. 2, was received in evidence.)

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REDIRECT EXAMINATION

Q. (By Mr. Avedon) Mr. Neville, at this staff meeting, I believe it states here it will be held on January 11. A. Yes.

Q. —would you tell me what occurred at that meeting? Why was it called and what occurred at the meeting? A. I had some work, repair work, I wanted to go ahead with, and so I called the staff together with Mr. Quinn to get his O. K. doing this work. Some of the work he O. K'd to go ahead. Some of it, why, he advised to hold up on.

Q. What type of work would this be? A. Oh, some of it was drainage. Some of it was overhauls on compressors, and different work. I forget all, what all it was.

Q. Do you recall anything else, any more detail about what kind of work was involved, if you can remember? A. No, I don't recall all of it. We had a list of work we wanted to do.

Q. The work that Mr. Quinn said to go ahead with, was that work completed? A. Yes.

Q. The work that Mr. Quinn said not to do, was that work

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done? A. Some of it has been done now, yes.

Q. No, I mean at the time. A. No, the ones that he said to hold up on, why, we held up on it.

Q. After the shutdown or the partial shutdown of

February 14, did the plant continue to produce products?
A. No.

Q. It stopped making all products? Did gas continue to go through the plant? A. Yes.

Q. And what was done to the gas? A. The gas was sent, was pumped on down and delivered in sale lines. We dropped out what condensate fell out in separators. We stored that.

Trial Examiner: These sale lines, are these the pipe lines?

The Witness: Yes.

Q. (By Mr. Avedon) What was the last day that you worked at the plant? A. May 15. * * *

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EXAMINATION

Q. (By Trial Examiner) Mr. Neville, what products were produced by the Winnie plant prior to February 14, generally speaking? A. Gasoline, isopentane, kerosene, gas oil, benzene condensate, butanes.

Q. Refinery products? A. Yes. Gas oil and kerosene. *

Q. And after February 14 these products were no longer produced? A. That's right.

Q. But those products already in storage and on hand continued to be shipped? A. Yes. * * *

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T. E. CONERLY * * *

DIRECT EXAMINATION

Q. (By Mr. Avedon) Mr. Conerly, would you give your name and address to the reporter, please? A. T. E. Conerly, C-o-n-e-r-l-y. * * *

Q. Do you have a position with Local 4-243? A. I have a part-time position as secretary-treasurer. * * *

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Q. (By Mr. Avedon) From General Counsel's Exhibit 18, can you tell me how many employees had their dues deducted from Texas Gas Corporation? A. Well, the total shown here in the amount of the check issued to the Local Union, \$490.00, divided by seven, is seventy. Seventy employees paid dues. * * *

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Q. How about GC-20, for what month was that? A. February of 1963 was one less than seventy, or sixty-nine. One particular individual was terminated, in effect, by the company. * * *

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CROSS EXAMINATION

Q. (By Mr. Sachse) Mr. Conerly, I understand it to be a fact that your union has not received any remittance of check-offs or any other funds from Allied Chemical or Union Texas Petroleum, that's correct, isn't it? A. The last received was February 8th from Texas Gas. * * *

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J. HOWARD MARSHALL * * *

DIRECT EXAMINATION

Q. (By Mr. Avedon) Mr. Marshall, will you state your name and address for the reporter, please? A. J. Howard Marshall, 11206 Tynewood, Houston 24, Texas. * * *

Q. And what is your position there? A. I am President of Union Texas Petroleum Division of Allied. * * *

Q. And I take it all of Union Texas is therefore under

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your jurisdiction and control? A. That is correct, except as, of course, I am limited, as I am sure you appreciate, by resolutions of the Board of Directors of Allied, and instructions from the top management of Allied.

Q. Right. But the day-to-day operation of Union Texas is under your control? A. Within the limits of my authority, yes.

Q. All right. * * *

How many manufacturing plants did you have? I will

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refer my questions all to January of '63. A. We had fourteen plants that were manufacturing various types of what we call liquefied petroleum gases.

Q. And what would the products of these plants be? A. Obviously it depends on what you put in them, but generally speaking the products of these plants are ethane, propane, butane and on down in the hexane range, which we would refer to as natural gasolines, somewhat complex hydrocarbons, but things that, generally speaking, are gases until they are condensed in one way or another from gas streams. * * *

Q. They all would be called natural gasoline plants or natural gas plants? A. In the industry they would generally be referred to as natural gasoline plants. That is a very broad term because natural gasoline plants do many different things, and you

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would have to get inside each plant to find out just exactly what it was doing.

Q. Would these plants be similar in nature or the products of these plants be similar to that produced at Winnie prior to January 1? A. No.

Q. Winnie was basically a refinery, is that the distinction? A. The principal units at the Winnie plant were what the petroleum business would call a refinery rather than a natural gasoline plant. There was some minor amount of natural gasoline products made there, but basically it was what the oil business would refer to as an oil refinery. Again this is a broad classification.

Q. Yes. * * *

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Q. When was the decision made to close down the Winnie refinery? A. Oh, about the day before it was closed down. I don't remember exactly, but very shortly before it was closed down.

Q. Would that be February 13? A. Oh, it might have been the 12th.

Q. Who made the decision to close it down? A. I did.

Q. When did you give the first notice to Texas Gas that the plant would be closed down? Was that in an oral or written communication? A. We sent them a written communication in accordance with the provisions of the contract. * * *

Q. (By Mr. Avedon) Is this the notification you were talking about?

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A. It certainly looks like it.

Q. I mean, that is your signature? A. That is my signature.

Q. Right. This is the notification by which—A. I think it's a copy of my signature, to be strictly accurate.

Q. You don't deny that you wrote this letter, I mean—A. I do not deny that I wrote the letter.

Q. All right. I just wanted that established. And this was the first communication that you gave to Texas Gas that you intended to close the plant down? A. Well, that is my recollection. There might have been some verbal conversation the day before or the day before that with Carl Gladden who was running the operation.

Q. Well, I mean—A. This is the first formal notice.

Q. All right. And that was sent on what date? A. Well, it says February 14, so I presume it was sent on that date.

Q. Well, did you write the letter? A. Yes, I dictated the letter..

Q. All right. Are you aware of the terms of the operating agreement?

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A. Yes.

Q. I show you General Counsel's Exhibit No. 5, Section 13, where it states that this contract shall become effective and shall remain in effect until April 1, 1963, unless earlier terminated by either party in fifteen days advance written notice. Did you give such fifteen days advance written notice to Texas Gas Corporation? A. The fifteen days referred, of course, to the period of time during which Texas Gas was entitled to its share of the fee as the independent contractor.

Q. That isn't the question I am asking you. I am asking you did you give them fifteen days advance written notice?

A. Yes, we gave them fifteen days, from fifteen days after February 14.

Q. Would you explain your answer? I am sorry, I don't understand it. * * *

A. I said the fifteen-day provision in the contract related to the time during which Texas Gas was entitled to charge us their fee of \$7,500.00 per month as an independent contractor to run the plant.

Q. In other words, your interpretation of the agreement is

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that this provision is that fifteen days after the notice of the termination of the agreement the operating agreement continues into effect? A. We still owed them the fee, and we have paid them.

Q. What was the fee for? Were they doing anything in this fifteen— A. The fee was for their operation of the plant as an independent contractor, just as I might pay Fluor a fee or I might pay a consultant a fee. In the oil business, as I am sure you know, all of us pay fees of one kind or another for services rendered. You might refer to it as the profit, which might be a more accurate description, that Texas Gas Corporation was entitled to as a result of taking on the operation.

Q. Then as this clause is worded, this contract shall become effective and remain in effect until April 1, 1963, unless earlier terminated by either party on fifteen days advance written notice, does that mean that this operating agreement continued in effect after February 14, when this letter, written termination letter, was sent? A. I don't know how you want to define it technically. The interpre-

tation that we put on it, which was one accepted by Texas Gas, is the one that I have given you.

Q. Are you aware of the provision in the contract that the contractor agrees that upon the termination of this

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agreement it will terminate the employment of its employees affected hereby with due and proper notice thereof? A. Yes.

Q. Are you aware of that provision? A. Yes.

Q. Now, can you explain to me how, if the plant was to be closed on February 14, Texas Gas would be able to give its employees due and proper notice of the termination?

A. What Texas Gas did I have no knowledge. I assume that they complied with their contracts with the Oil Workers. I have no knowledge of what they did.

Q. Prior to February 14, 1963, had Union Texas terminated the agreement with respect to transportation and gathering systems? A. It's my recollection that we terminated that aspect on February 11. That is my recollection. I would have to check the records to be sure, but it was a little before the plant, itself, was shut down for the last time.

Q. Was the pipe line system shut down? A. No.

Q. Were the employees employed by the pipe line system taken on as employees of Union Texas Petroleum?

A. I can't say whether all of them were, but most of them were. The pipe line company, of course, or the pipe line

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operation was almost a public utility. It had nothing basically to do with the plant operation, at all. It was

supplying almost two hundred million feet of natural gas a day to a series of large manufacturing plants in this general area. It was impossible, of course, to shut down the pipe line system without cutting off a whole host of very substantial industrial consumers. Its operations were generally unrelated to the plant.

Trial Examiner: Well, the product of the Winnie plant did go into the pipe line system, didn't it?

The Witness: Mr. Examiner, on one side of the Winnie plant are some gas supplies containing entrained liquids, the things we talked about, propane, butane, natural gasolines, some condensates, but mostly what we would call condensates, liquids that have to be removed from what we call the wet gas streams before you can deliver the gas into pipe lines to deliver it to the consumers of gas.

If you leave the liquids in there, you would shut down the pipe lines.

Do I make myself clear?

Trial Examiner: Sufficiently. Proceed. I don't want to get into any technical discussion at this point. I will allow Mr. Avedon to continue.

Q. (By Mr. Avedon) Was Union Texas Petroleum—

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A. May I just make one clarifying statement for you?

There are various amounts of dry gas that are liquid fed into these same pipe lines that are delivered to industrial customers. In other words, gases that are even more remote from the operation of the plant, itself.

Trial Examiner: But they emanate from the Winnie plant?

The Witness: No, they do not. They emanate directly from the wells or other people's plants, and never go through the Winnie plant, at all.

Trial Examiner: These are the gases, the non-liquefied gases?

The Witness: It's the same kind of stuff that comes out of the tail of the Winnie plant, but it comes out of the tail of other people's plants, or it comes out of wells where it has been knocked out at the wellhead. * * *

Q. Did you ever give instructions to any of your employees to notify Local 4-243?

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A. I did not.

Q. Why was the plant shut down on February 14, 1963? A. In order to answer this question, I have to go back a little before February 14. We were not sure, actually, up until the very tail end of 1962, almost on the morning of December 31, whether we were going to buy the Winnie plant. We had been discussing it with Texas Gas for several months. We had discussed with Texas Gas that the acquisition date, if we bought it, would probably be somewhere around the 1st of February or the middle of February. Texas Gas, on the other hand, because of the peculiarities of their own tax position, told us that unless the bare legal title to the plant could be transferred prior to midnight of December 31, either they weren't in a position to sell us the plant at all, or if they sold it because the tax consequences to them would be so different, that the

plant would become sufficiently high that we wouldn't want to buy it. And so just before— * * *

A. Just before the 31st, we finally agreed that we would

purchase the bare legal title to the physical assets, but this on the condition that they would go forward and operate the plant in precisely the same way as they had done, in order to give us the time necessary to do the engineering, to perfect the plans, and to place the orders that would be necessary to convert this plant from a small gasoline refinery, essentially an unprofitable thing, to a petrochemical operation.

By the middle of February, we had gotten far enough with our engineering and our projections for the ways and means of converting the plant to a petrochemical operation that we were ready to shut it down.

Obviously since the plant as a gasoline plant was and would continue to be a losing proposition on any realistic accounting, this plant hasn't made money for some years as a plant. It was carried basically by the gas lines.

Therefore, as soon as our engineering and our plans had been perfected to the point where we were ready to take the plant down and start the conversion, we did it just as quickly as we could, and as soon as we were ready, essentially to cut off an unprofitable operation.

Q. Then may I take it you were ready to begin the conditioning on February 14? A. We were ready to begin the initial steps, which entailed a complete shutdown of the refining operation.

Q. When was the— A. We also, by that time, had made our contracts with Fluor to take on this job. Prior to

that time—this came upon us with some suddenness—prior, on December 31, we were not ready. And we simply allowed Texas Gas to run the thing as it had run it before until such time as we were ready to take on the main job.

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Q. When was the contract made with Fluor? A. I can't give you the exact date when the formal papers were signed, but by February 14, we had gone far enough that we knew exactly where we were with Fluor, and where we were going to proceed from there.

Q. Had the contract been entered into prior to the shutdown? A. The record would show. I don't recall. Again we could answer the question specifically. I don't recall. Verbally it had been under discussion for a month.

Q. Had any notice been given to Local 4-243 that Union Texas intended to sub-contract out the maintenance work at this plant? * * *

A. I gave none. * * *

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Q. Are you aware of the products that are presently being made at the plant? A. Yes.

Q. What products are being produced at the plant now? Has it been converted into a petrochemical plant? A. In part.

Q. What products are being produced at the plant now? A. Propane, butane, natural gasolines, hexane, benzene.

Q. All of these products that you have just designated, they were produced by the plant prior to the shutdown?

A. In somewhat different form and in different quantities.

Q. But the same end product was produced? A. Well, when you say the same end product was produced, if one

produces two per cent of kerosene under one set of operating conditions and zero per cent under another set of conditions, or ten per cent under still a different set of conditions, and you modify the plant to achieve different results, maybe you can say they are all hydrocarbons. I would agree with that statement. If you say it's the same end products, I would say that even the alteration of the proportion of the end products and the

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shift in the specifications thereof would make it quite different.

Trial Examiner: Well, in what respect is the plant producing petrochemicals now as distinguished from the refinery products produced before? What is the difference, anyway?

The Witness: Not nearly as much as it is likely to be about five or six months from now.

What one does with a plant of this sort, Mr. Examiner, is you modify it in steps. You can't modify the whole thing at one fell swoop.

You take on a certain amount of the operations of the modifications, put in the valves and tie-ins and the different things, all of which anticipate the next step and the next step and the next step. * * *

Is the company producing anything right now which may be technically described as a petrochemical?

The Witness: Yes, hexane solvent is a petrochemical. There was a gentleman in my office this morning that was wondering when he was going to get the next tank car.

Trial Examiner: Hexane, was that—

The Witness: Solvent.

Trial Examiner: Solvent. Was that the same product

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produced before February 14?

The Witness: I would doubt it, but I am not completely familiar with the operations prior to February 14.

Trial Examiner: Are there any other petrochemicals other than this solvent that the plant is now producing?

The Witness: Benzene.

Trial Examiner: That is technically a petrochemical?

The Witness: Definitely.

Trial Examiner: And was benzene produced before February 14?

The Witness: They used to make a thing called benzene concentrate. The type of benzene that is being made there now would be different than what was made previously.

Trial Examiner: I am just trying to clarify certain terms in my mind which were used before.

The Witness: Yes.

Trial Examiner: One of the questions I did want to ask a competent witness on that was generally what was the nature of a petrochemical product as distinguished from a refinery product, because certain statements were made at the outset of the hearing that there were going to be drastic changes in the operation of the plant, and I would

like to have some general line of differentiation between petrochemical and refinery products.

The Witness: Well, let me say that all petrochemicals

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that we are talking about, Mr. Examiner, in a plant of this type, or almost any plant, are hydrocarbons. Now, hydrocarbons covers such an enormous range of different kinds that it's pretty hard to describe them.

As a matter of fact, in terms of chemistry nobody has yet analyzed or classified all the hydrocarbons that come out of a barrel of crude oil or a foot of natural gas.

Generally speaking, petrochemicals consist of specialties which are not normally extracted either at all or in the same state of purity that are required for their use in a subsequent chemical operation.

Let me say that things like gasoline or even propane, as they are roughly divided in the ordinary oil refinery, are pretty crude substances.

What you are talking about when you are talking about petrochemicals are things that are either extracted from hydrocarbon streams going through the plant which are not taken out in the conventional refinery, or if taken out, in a petrochemical plant are taken out in a much greater state of purity.

It goes even further. Before you are finally through with the petrochemical operation you tear the molecules apart and put them together again by what we call synthetic processes, which is what we are going to do at Winnie.

Trial Examiner: Are you a chemical engineer?

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The Witness: Well, I am sort of a bootleg one. I did have a chemistry major in college. * * *

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Let me ask one or two more questions with reference to the term petrochemical.

Were any of the products manufactured under Texas Gas Corporation at the Winnie plant in the nature of petrochemicals?

The Witness: If there were any they were so minor that I don't think any of us could have said, insofar as I know, that the plant made any petrochemicals, such as the industry would classify those materials.

Trial Examiner: How about this solvent, this—what did you call it, propane solvent?

The Witness: I said hexane.

Trial Examiner: Hexane solvent. Was that manufactured before?

The Witness: I understand they made some kind of a hexane material of a very different purity than we are now making and will expect to make.

Trial Examiner: But it was a petrochemical?

The Witness: It would all be a combination of hydrogen

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and carbon and that is about all you can say about it.

Trial Examiner: Well, we have now a distinction between refinery products and petrochemicals, and perhaps the classification is too general, and it can't be so simply classified into one form or another, but I am just trying to visualize what change has taken place and what change will ultimately take place, and what degree of change.

The Witness: Some months from now I don't think that the casual observer walking through the plant would recognize it as the same facility.

Trial Examiner: In manufacturing petrochemicals do you use similar equipment as is used in a refinery?

The Witness: Essentially, no. All plants use certain basic things, like boiling and fractionation and that sort of thing, but one of the things that is now under contract to be erected is something that is called an Isomax unit, and an Isomax unit will take hydrogen, combine it with kerosene or fuel distillate, and actually make a combination of various types of petrochemicals.

By this I mean raw material that will go into Allied's other plants, and some gasoline.

Let me say, Mr. Examiner, there is no way that you can make exclusively petrochemicals. It's a question of the degree of emphasis and what kind of equipment you have in there.

But just let me ask you, I am assuming at this point that perhaps these questions will not be cleared up later on, as of now, what percentage of the total product of the plant is in petrochemicals?

The Witness: Oh, at the moment, remembering that this is only the initial stage of the conversion, I suppose ten per cent or something—this is a rank guess.

Trial Examiner: About ten per cent?

The Witness: This is a rank guess.

Trial Examiner: And about ninety per cent would generally be of the same character that was produced before?

The Witness: In different proportions of different specifications, of different purities.

Trial Examiner: All right.

Now, when you took over the operation of the Winnie plant for the Respondent, you, of course, knew the job that

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you had to do to convert it?

The Witness: Well, we knew some of it.

Trial Examiner: Generally you had a picture in mind—

The Witness: We had a picture in mind, and we have even drawn charts of that picture. It would honestly compel you to say that you always find out a few things after you get in that you didn't know. * * *

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Q. Do you know a single product that is being produced now that was not produced by Texas Gas Corporation?

A. It depends entirely how you define product. If you mean by this of the same specifications, of the same purity, they are different today.

Q. I mean gasoline, hexane, butane, propane, naphtha.
 A. These substances are not as simple as you try to make them. * * *

Q. (By Mr. Avedon) I assume that these are generic terms used for different type products, there are different specifications that the products can be made to, would that be considered correct? A. If you are saying that they are generic terms, I would say

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that is correct.

Q. Well, I mean, are they generic terms? A. Gasoline is a generic term.

Q. Right. And butane is a generic term? A. It's a generic term.

Q. Right. * * *

Q. (By Mr. Avedon) Mr. Marshall, isn't it true that using the same equipment that by adjusting temperature and pressure, you can change your product mix or obtain more of one product than another product? A. Only within very narrow limits. We bought this plant, which had a depreciated book value of maybe three and a half million dollars. I have already approved in changed facilities and different equipment totaling almost seven

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million.

This illustrates the point I am trying to make, that it's only within very narrow limits can you change the specifications of products.

Basically, if you are really going to take one kind of material and upgrade them into another, which was precisely the purpose we had when I negotiated the purchase of the Winnie plant, if you are going to do that, then you basically change the entire operation and change the equipment. And you can't upgrade unless you do.

Trial Examiner: Well, would you say, then, Mr. Marshall, that the change contemplated was not so much a change in the character of the product from a refinery product to a petrochemical product but that upgrading and refinement of the previous product?

The Witness: When we talk about petrochemical raw materials, that is partly what we are talking about. The processes are different. The equipment is different. Almost everything about it is different. They have only one thing in common, that is, I come back to things, they are both a combination of hydrogen and carbon, in tremendously different proportions, of different purity, of a different character. Frequently where the molecules have been torn apart and put back together again in a different arrangement.

Trial Examiner: And how much of this upgrading has

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been done thus far percentage-wise?

The Witness: Oh, percentage-wise, not too much, so far.

Basically what has been done is that various of the units have been altered and tie-ins and set-ups been done to the units to prepare them for the addition of this piece of equipment and this piece of equipment, another piece of equipment.

We have a chart and a schedule which indicates precisely how this will proceed, which essentially is the same chart that we had when I originally presented it to the Board of Allied, with the reasons for the purchase of this equipment.

Trial Examiner: And this is being done in the fastest way possible?

The Witness: Just as fast as we can do it, basically to convert as rapidly as possible a losing operation into a profitable one.

Every day that we lose in getting that final thing done postpones the day when we come out at the point that we projected when we purchased the plant. * * *

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Q. The plant is operating now? A. If you can call it operation. Our people describe it really as a sort of a pilot plant job, in which we are trying different things in order to be able to set this thing, when we get the rest of the equipment in, in a better way. * * *

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Q. Do you know when the plant, as you say, was shut down, when the plant started up again? A. Well, there really hasn't been a full start-up yet. As I say, it's, so far, it's been pretty much of a pilot plant operation. If you wanted to be non-technical about it, some time in the early part of June.

Q. You started— A. First week in June we got some of the units back on stream. But they have been going up and coming down again, and going up and coming down again, as we have experimented with the units.

Mr. Avedon: I have nothing further of this witness.

Trial Examiner: Do you have any cross examination of Mr. Marshall?

Mr. Sachse: Yes, a few questions.

CROSS EXAMINATION

Q. (By Mr. Sachse) Mr. Marshall, when did Allied Chemical first begin to think of the possibility of acquiring this Winnie plant? A. Over a year before we did, as I recall it, we first

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considered the question back in the late part of 1961. I can't give you the exact date, but that was the first time we considered it.

Q. After that was it attractive to you as a gasoline plant, Mr. Marshall? A. Well, definitely no. This plant had been what they say in the business shopped around the market for some years. Everyone has known that it has been offered for sale again and again.

We looked at it originally as the possibility of acquiring it as a small gasoline refinery, which is basically what it is.

And we concluded that in the present state of the gasoline markets that the day of the small gasoline refiner has long since gone by. There are practically none left. You can't run something that is solely a small gasoline plant any more at a profit.

They have died one by one in the decade since, two decades, since the war.

An on this basis, we always wanted the gas lines, but in

terms of this thing as a gasoline plant, it did not seem attractive, and at that time we were considering the construction of a large petrochemical complex at Baton Rouge, and had we gone forward at the time that we considered, at the time that we were considering the Baton

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Rouge plant, we would have made at Baton Rouge a lot of the things that we now project that we are going to make at Winnie.

Q. For the record, please tell the Trial Examiner, Mr. Marshall, what the business of Allied Chemical is. A. That is so complex that I hardly know, myself, but basically Allied is a producer of something that is relatively immaterial to this case, what we call the heavy chemicals, which are things like sulphuric acid and soda ash and chlorine and the fluorides, and what are generally spoken of as the heavy chemicals.

There is another part of Allied's business that used to be based, which we now call the hydrocarbon business, and this is the manufacture of plastics, of various types of synthetic fibers. You think of nylon and caprolactam and the polyvinyl chlorides, the plastics.

These things used to be made from the by-products of the distillation of coal, coal tar distillation. And this was essentially Allied's sources of these raw materials until quite recently, and today Allied, in common with many other chemical companies, is shifting what used to be a coal tar-based chemical business to what we will call a petroleum-based chemical business.

When I use the word petroleum I am describing everything that comes out of the ground, from what you and I

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would call oil and gas wells. * * *

Q. (By Mr. Sachse) My purpose in asking those questions is to lead to this: In what way is the Winnie plant to be integrated into the chemical business of Allied Chemical? A. It will be the source fundamentally of what Allied calls the aromatics. The aromatics are benzene, toluene, xylene, three or four others. These basic aromatic petrochemicals are the things that go into various of the plastics, which have become part of our modern existence.

Trial Examiner: And is it contemplated that the ultimate product of the Winnie plant will be used for the manufacture of plastics?

The Witness: This will be one of its great uses.

Q. (By Mr. Sachse) Is it a fair question to say—

The Witness: And the synthetic fibers.

Q. (By Mr. Sachse) Is it fair to say that as this conversion progresses, the gasoline, instead of being the main

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product of the refinery, will become the by-product of the refinery? A. We will do everything possible to minimize the yields of gasoline and heating oils. These are the unprofitable products of any small refinery today.

Q. Mr. Marshall, have you any anti-union animus of your own, sir? A. I have spent, I think, half of my life bargaining with my friends with the Oil Workers Union, not with these particular individuals, but for many years I was president of the Ashland Oil and Refining Company, and I used to personally bargain the contracts for seven

different refineries, and this I did for seven years. Face-
tiously, I stopped bargaining in hotel rooms and used to
do it in the union hall. Far from having any union ani-
mus, as far as I can analyze myself, I have none.

Q. Would you say whether or not your contract with
Texas Gas as an independent contractor on December 28th
had anything to do with the fact that there were unions
in the plant at Winnie, Texas? A. The thought never
occurred to me. All we were trying to do was to keep
the plant rocking along to minimize the losses as best we
could, until we were ready to start the conversion.

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Had we been able to acquire the plant around the first
or the middle of February, which is what we would have
preferred to have done, had it not been for the tax con-
siderations of the seller, a lot of these problems would
never have arisen.

Q. If I understood your testimony correctly, it was
contemplated that Texas Gas would have actually shut
down the plant before Union Texas ever bought it, is that
correct? A. That is correct. * * *

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Q. (By Mr. Sachse) Mr. Marshall, I show you a copy of
a letter that has been marked R-3, which I have exhibited
to the General Counsel, and ask you did you receive the
original of that letter? A. I did.

Q. Is that the letter of February 18 from Texas, from
Mr. A. C. Gladden of Texas Gas Corporation? A. Yes.
It's a copy of it. * * *

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(The document above-referred to, heretofore marked Respondent's Exhibit No. 3, was received in evidence.)

* * *

Q. (By Mr. Sachse) Now, Mr. Marshall, I show you a copy of a letter which has been marked R-4, which appears to have been written by Mr. D. F. Pierce to Mr. A. C. Gladden.

(The document above-referred to was marked Respondent's Exhibit No. 4 for identification.)

Q. (By Mr. Sachse) Was that letter written at your direction? A. It was.

Q. And is this the letter that was in response to the letter just introduced as R-3? * * * A. Yes.

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MR. AVEDON: Yes, I have a few questions. * * *

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A. We terminated the operating contract on February 14, 1963.

Q. At what time? A. As I recall it, it was 4:00 p. m., but we are talking of a minor technicality. The record shows.

Q. And I take it that prior to that any activities at that plant were undertaken by Texas Gas, is that correct?

A. That is correct.

Q. And after — A. You say any activities.

Q. Well, activities with relation to the operation of the plant.

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A. Activities relating to the operation of the plant were carried on at the direction of the managers of Texas Gas Corporation. They were not pursuant to the provisions of the operating contract allowed to spend money without our approval. But the actual operations were directed and managed by the people in Texas Gas Corporation.

Q. And that was until 4:00 p. m. of February 14?

A. Roughly. * * *

RECROSS EXAMINATION

A. I became President of Union Texas Natural Gas Corporation on January 1st, 1961. That corporation in the following year, 1962, was merged into Allied Chemical, and from that day forward, I can't call the exact date, approximately sometime in April of 1962, it became a division of Allied Chemical Corporation, and ceased to exist as a separate corporation, Union Texas Natural Gas Corporation.
* * *

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Q. Now, since you have become President of Union Texas in 1961, I would like to know whether or not any union has ever presented to you a petition or any other request, or claimed representation at any of the plants of Union Texas? A. No. * * *

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EXAMINATION

Q. (By Trial Examiner) Did you negotiate with Texas Gas Corporation — * * *

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Did you as President of Union Texas negotiate the purchase agreement, which is in evidence as General Counsel's Exhibit 4? A. I did.

Q. Did you also negotiate the operating contract with Texas Gas, which is General Counsel's Exhibit 5? A. Yes.

Q. Would you say that you were the principal negotiator for Union Texas then, being the president of the company? A. Yes.

Q. That purchase agreement is dated December 5, 1962. At the time of this purchase agreement, was there any date for closing contemplated? A. We contemplated a closing date of December 31, providing all the conditions in that purchase contract could be fulfilled, and as a practical matter, until December 31st we weren't sure they could be fulfilled. We just barely made it.

Q. And the closing was actually— A. The closing was actually on December 31.

Q. On December 31. As of December 5, contemplating a closing or projecting a closing at the end of that year, did you have in mind the time that Union Texas would begin its change-over.

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operations? A. We had hoped that it might be about the first or the middle of February. Had we been able to close it by the middle of December or the 20th of December, I mean not the plant but the contract, we would have probably been able to do our job more quickly.

We just hung on a suspended thread right up to the last moment as to whether the contract of purchase would ever be closed. There were outs right up to the last minute, really, on both sides.

Q. But it did work out? A. It did work out on December 31, and we just made it.

Q. That was the date that you had in mind at the time of the execution of the— A. Oh, we hoped that it might be before.

Q. Were the tax considerations then discussed and that is— A. In detail and for ourselves.

Q. At the time of the purchase agreement? A. At the time of it and before the purchase agreement was signed, and afterwards.

Q. Did you have in mind at the time of the purchase agreement, December 5, that there would be an operating contract? A. I don't suppose at that time we had thought about it. I didn't know whether it was going to be a purchase contract.

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Q. Well, you were operating on an assumption that things would go successfully, and that there would be a closing and then did you have a projection afterwards as to what the company would do, Union Texas would do upon the closing? A. We had the projection of what we would do with the plant even before we ever signed the agreement, to try to close it before the end of the year. This work had basically been done back in October and November as to a general prospective plan of conversion. We did not have the time schedule filled in because we didn't know how to fill it in.

Q. Well, I am not sure that my question was answered. At the time of the purchase agreement and the negotiations therefor, was there a contemplation of an operating contract such as— A. On the —

Q. Let me finish. A. Excuse me.

Q. — such as was later consummated on December 31, was that discussed? A. On December 5 it was not discussed.

Q. When did it first come under consideration? A. As the closing date became delayed for one reason or another in relation to the conditions, sometime just before the end of the year, we had to face the problem of what

happens after the bare legal title passes to us?

Q. And that is the first time you gave that consideration? A. That's correct.

Q. When did you start negotiating the operating contract? A. The last week in December.

Q. And you started the last week in December and you finally executed — A. When it looked like it might close.

Q. That would be about December 24th you sat down— A. It would be after Christmas. It was in the week following Christmas.

Q. You worked out the terms of that operating contract then? A. That's correct.

Q. And before you sat down to work it out, you gave some consideration as a company to the necessity for an operating contract? A. Certainly.

Q. And when did you have that consideration the first time, about? A. During this week that I mentioned.

Q. During the same week you were negotiating it? A. Certainly. It didn't take us very long to make up our minds that something had to be done. This was not a major policy question.

Q. Did you have any tentative schedule as to when you

would begin the conversion processes? A. No specific date. A specific plan, but the date obviously turned on when we could complete the engineering, when we could make our arrangements with Fluor, or whoever might take on the initial stages of the conversion task. These were things that were just hung suspended until we could get the ducks in order. We didn't know exactly how long it would take.

Q. You didn't know how long it would take but you had — A. To get the ducks in order.

Q. But you had a tentative plan? A. This is right.

Q. For beginning the conversion and modification? A. What we were going to do and what steps we were going to take. The timing, no.

Mr. Sachse: Mr. Examiner, I don't wish to interrupt your examination, but I have, and we intend to supply, the internal plans of the company as of December 3rd, which was at the time that the purchase agreement was entered into.

You see, it was made on December 5. And I have the internal plans for closing and reopening that existed, of December 3rd and December 4th, which I would be happy to supply you and intend to supply to you.

Trial Examiner: Yes.

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Well, I had these questions in mind because these are very carefully considered things, generally speaking, among companies, such as Allied Chemical. These companies don't rush into things, I know. Things are worked out.

And while there may be unforeseen circumstances, I don't know, I was questioning in my own mind whether the com-

pany knew step by step what it was going to do when it entered into this purchase agreement, whether it contemplated and projected an operating agreement for a period of time.

And that was one of the reasons for my questions. But if you have answers to this as of the time of the purchase agreement —

Mr. Sachse: Well, the purchase agreement was December 5. These schedules are December 3rd and 4th, so you see, they are of the same time.

Trial Examiner: Yes, but I was led to believe that the necessity for the operating contract was sudden.

Mr. Sachse: Well, that's correct. And this will be supported by these plans which I have, which will show that as of December 5, it was thought that the plant would be shut down before title was taken by Allied Chemical. And that Allied Chemical would take it in a shut down condition, and sometime later reopen, as these schedules here will show you.

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Q. (By Trial Examiner) You did negotiate the purchase agreement as the principal negotiator for the Respondent. Was it the intention of both parties to the purchase agreement that it be bilateral, that both sides were committed, that this was a transaction in which there was a contract to make the sale or purchase? A. It was bilateral in the sense that neither was bound until both were bound. They didn't have an option and we didn't have an option. Until the final papers were signed, and it was agreed between both parties that all conditions were fulfilled, neither was bound. * * *

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HERSCHEL A. KEELER * * *

DIRECT EXAMINATION

Q. (By Mr. Avedon) Would you give your name and address to the reporter, please? A. It's Herschel A. Keeler, Buna, Texas. It's Post Office Box 546. * * *

Q. In 1962 what was your job? A. I was a rackman.

Q. What are the duties of a rackman?

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A. We handled the transferring, blending and loading of gasoline products and related products of propane and butane and LPG products, too. * * *

Q. Prior to the sale of the plant on January 1, from whom did you get your instructions on loading operations? A. We received instructions on the majority of the loading came through the shift foreman, but they were directed by R. G. Herrington.

Q. Shift foreman? A. Yes, sir.

Q. Did you ever get any instructions directly from Mr. Herrington? A. Yes, sir, we did.

Q. What were these instructions, what would they consist of?

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A. What tank cars to load, what products to load in them, and what tank trucks to load with gasoline products, and what stations they were to be delivered to. We passed that information on to the drivers on what stations they were to be delivered to.

Q. And this was prior to the sale of the plant on January 1, is that correct? A. Yes, sir.

Q. What was Mr. Herrington's job at that time? A. His exact title, it was changed there shortly after, but he was Director of Traffic. He was traffic supervisor. Just the exact position I don't know really.

Q. You got your orders from him, though? A. Yes, sir.

Q. All right. After January 1, 1963, did Mr. Herrington work at the plant there? A. Yes, he did.

Q. After January 1, was there any change in how your shipping instructions were received? A. No, sir, none whatsoever.

Q. Who would give you instructions? A. The shift foreman and Mr. Herrington, and we also received instructions from the Sales Department in the Houston office.

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Q. Now, did you ever get directly, yourself, instructions from Mr. Herrington? A. Yes, I did.

Q. After January 1? A. Yes.

Q. What would these instructions involve? A. As to what tank cars to load out and what products to load into tank cars, and what gasoline products to load into tank trucks.

Q. Did you comply with these instructions? A. Yes, I always followed them.

Q. Did this continue right up to the time of the shutdown? A. Well, I don't know up until the time of the shutdown. I was transferred up to a higher job approximately two weeks before the shutdown.

Q. All right. A. About February 1st.

Q. Between January 1 and February 1 did this same procedure continue? A. Yes, sir.

Q. As far as receipt of orders? A. Yes.

Q. And Mr. Herrington in this period did what? A. He would normally come down to the loading rack and either carry those instructions with him with his name

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already on it as to what tank cars to load out and what products to load in them, and normal operating procedure of the gasoline rack. * * *

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Q. Now, Mr. Raglund and Mr. Tinsley were working for whom after January 1, 1963? A. Union Texas Petroleum.

Q. In what department? A. In the Sales Department.

Q. All right. And did you ever receive instructions from them? A. Yes, sir.

Q. After January 1 of 1963? A. Yes, sir.

Q. What were these instructions, what did they involve? A. Mr. Raglund called down and told me to load Joe Barnes' truck which was one of the truck drivers of Union Texas at that time, with certain products. Now, I can't say specifically whether it was 98 in Compartment 1 and 2 and 90 in 3 and

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4, but it was of that nature. What compartments to load and what products, what gasoline, and what stations he was to deliver those products to, when his truck came in.

Q. Did this happen on more than one occasion after January 1 of '63? A. Yes, sir.

Q. And did you also receive any information from Mr. Tinsley? A. Yes, sir.

Q. What was that information? A. It was the same type information, what products to load and where it was to be dispatched to.

Q. And did you load the products as instructed? A. Yes, sir.

Q. Did you load the products as instructed by Mr. Herrington when he gave you instructions? A. Yes, sir, surely did.

Q. Was hexane solvent, how is that shipped out of the plant? A. Shipped out by tank cars.

Q. Was there any special instructions with respect to hexane solvent? A. Yes, sir. Before we could load a hexane solvent car, it came in with the lid on it, and we had to go down and take the lid on it off of it, and call either Mr. Herrington

or Mr. Marvin Kruger, which was our operations superintendent at the time, and either one of the two was the only two that could inspect the tank car before it left the plant, before we started loading of the tank car.

Q. Was this prior to January 1 of 1963 that this rule was in effect? A. Yes, sir.

Q. Was this rule continued in effect after January 1 of 1963? A. Yes, sir, it was.

Q. Who would inspect the tank cars after January 1, 1963? A. Well, both of them could have.

Q. Right. Who did? A. But Mr. Herrington did.

Q. And then after he inspected it, what would happen next? A. He would tell us whether it was O. K. to go ahead and load the product or not.

Q. Did he ever tell you it wasn't O. K.? A. Yes, sir, we had to flush a couple of the cars out before he O. K.'d them.

Q. When was that, after January 1? A. Yes, sir.

Q. And what would he tell you to do? A. He would have us flush it out with hexane solvent, and

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then we would have to pull the belly cap off the bottom of the car in order to get solvent out on the ground after we flushed it out, and then he would check it and see if it was clear of impurities or any rust or anything in the bottom of the car, or any other liquid that could possibly be trapped in it.

Q. If he told you to flush out the solvent in the tank car, what did you do? A. We flushed it out.

Q. If he told you to load it what did you do? A. We loaded it.

Q. Who did you take your orders from after January 1 of 1963 with respect to these activities? A. You are talking about just the hexane solvent?

Q. Right. A. Normally from Mr. Herrington.

Q. When you say "we" how many rackmen were there? A. There were ten of us. * * *

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CROSS EXAMINATION * * *

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Q. And as a rackman you would be responsible to your shift supervisor? A. Shift foreman, yes, sir.

Q. Well, who was that? A. Ralph Kunefke.

Q. All right. Now, if I further understand what you are telling all of us, you were concerned in the shipment of liquid products from the Winnie plant, is that correct?

A. That was a portion of my job, yes, sir.

Q. What else was your job? A. Taking care of the tank farm, as far as blending of the gasoline products in the tank farm, transferring them

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and gauging off the storage tanks, making out the reports that pertain to the storage of the gasoline and the blending of the loading of the products.

Q. All right. Now, all of this was in connection with delivery and sales, was it not? You weren't engaged in producing gasoline, were you? A. No, sir, uh-uh. * * *

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Q. And in short, you did after January 1 what you had done before January 1? A. Yes, sir.

Q. And all of this related to the sale and delivery, rather than the production of the gasoline, is that right?

A. That's right, but all the time that I worked for Texas Gas, now, I didn't work at the loading rack. I had been in the Operation Department, too. The loading rack was in the line of promotion in the operations, and I worked at the No. 2 plant as a helper. * * *

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REDIRECT EXAMINATION

Q. (By Mr. Avedon) Your job was covered by the OCAW Union contract, wasn't it? A. Yes, sir, it was.
* * *

Mr. Avedon: It is stipulated between the counsel for Respondent and counsel for General Counsel that if Mr. A. G. Lassiter were called as a witness for the General Counsel, he would testify in substantially identical fashion both on direct and cross examination as testified to by Mr. Keeler, the prior witness.

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Trial Examiner: Is it so stipulated?

Mr. Sachse: Yes, I think that is all right. Yes.

Trial Examiner: The stipulation is admitted. * * *

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I. D. BUCKLEY * * *

DIRECT EXAMINATION

Q. (By Mr. Avedon) Give your name and address to the reporter. A. I. D. Buckley, 1220 Georgia Street, Beaumont, Texas. * * *

Q. In 1962 what was your job? A. In 1962 I was classed as terminal pumper at Port Neches terminal. * * *

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Q. (By Mr. Avedon) Prior to January 1 of 1963, from whom did you get orders with respect to operation of the terminal? A. Well, of course, Mr. Comer was my immediate foreman and, of course, if he wasn't there—we worked around the clock twenty-four hours a day, and he was only there part of the time. Ordinarily he was there on the day shift unless there was a barge being loaded or unloaded; then he would stay over. Then if he wasn't

there, they would call from the plant and give orders from the plant. Sometimes it would be Mr. Herrington; and at other times it would be Mr. Kruger.

Q. What was Mr. Herrington's job at the time? A. I believe Mr. Herrington was over the transportation. I don't know just how his title read, but he was over the transportation of the stuff shipped in and shipped out.

Q. What were the orders you would receive from Mr. Herrington?

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A. He would call, and if the foreman wasn't there, if I was there, or whoever the operator was that was there, he would give instructions when barges would come in and what product we was to load on them, and so forth and so on, the dates they would be in, the product and what we would load on them.

Q. Did you follow his instructions? A. Yes, sir, we did. When I got the instructions and the foreman wasn't there, I wrote the instructions down in the log book.

Q. After January 1, 1963, did Mr. Herrington ever give you any orders? A. After January 1, 1963, yes.

Q. What was the nature of these orders? A. The orders were the same as they were before January 1963.

Q. What did these orders involve? A. Beg pardon?

Q. What did he tell you? A. They would be the dates of arrival of the barges, what was coming in or what was to be shipped out. Sometimes it would be empty gasoline barges coming in to be loaded with certain octane gasoline to be shipped out. Other times it would be barges of distillate or condensate coming in which we used as feed stock for the plant. He would tell us the

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arrival dates, and so forth, on those things. And sometimes it would be empty barges to ship out condensate.

Q. After January 1, 1963, when you received these instructions, what did you do? A. I did the same as before. I recorded them in the log book and followed instructions.
* * *

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JAMES C. ELLIS * * *

DIRECT EXAMINATION

Q. (By Mr. Avedon) Will you give your name and address to the reporter? A. James C. Ellis, 307 Harding Drive, Houma, Louisiana. * * *

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Q. What were your duties? A. I was in charge of all functions of the Maintenance and Construction Department.

Q. What work came under your jurisdiction? A. Various crafts, pipefitters, welders, electricians, utility—the utility section consisted of carpenters, painters, insulators and laborers. And the machinists were also in my department.

Q. Were these employees represented by unions? A. Yes, sir.

Q. The pipefitters were represented by what union? A. AFL.

Q. What union? A. Pipefitters Local at Port Neches—I don't recall—

Q. How about the electricians?

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A. By the International Brotherhood of Electrical Workers.

Q. And how about the other employees? A. CCAW.

Q. Who did you report to, who was your supervisor?

A. Mr. Charles C. Albritton, plant superintendent.

Q. What was his job? A. Plant superintendent.

Q. Who was Mr. Albritton's supervisor? A. R. T. Neville, general superintendent.

Q. How many maintenance people did you have working for you at Texas Gas. A. Twenty-three.

Q. And what work did these maintenance people perform? A. The machinist group took care of all mechanical repairs on engines, motors and pumps, retubing and plugging of condensers and vessels. * * *

Q. Will you explain the term "turnabout" or "turn-around"? A. "Turnaround" ordinarily is performed by taking a unit out of operation, going through it with a thorough inspection and determining what should be done for more efficient

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operation. * * *

Q. Who would handle the work performed in connection with the turnarounds? A. The plant personnel, if the particular job was adequate; if not, outside help would be—we would get outside help on a temporary basis.

Q. Did you ever subcontract work out at the plant? A. Yes, sir.

Q. What would be subcontracted, and would it be very often? A. Our painting was on a routine basis and some of the insulating was done and some new installations was

performed by contractors, namely, the benzene concentrate and hexane

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units that were involved.

Q. Why would work be subcontracted? A. When plant personnel wasn't adequate to perform the work, in the time element involved. * * *

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Q. On January 2, 1963, did you have a conversation with Mr. Albritton? A. January 2? Yes, sir.

Q. Will you tell us what he said? A. I asked Mr. Albritton who were the visitors at the plant on the 1st. I had seen some strange cars parked there. And

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he said that some Union Texas Petroleum personnel had been there checking our storage facilities and amount of products on hand. He mentioned that Mr. Quinn had performed the gauging and made some remark about him doing the gauging instead of an operator due to Mr. Quinn's capacity with Union Texas Petroleum. * * *

A. And that on the tour while they were gauging the tanks, it was noted and called to the attention—called to his attention there were a couple of loose boards laying between Tank 52 and Tank 53; that we should get them up right away.

Q. Who said that? A. Mr. Albritton said Mr. Quinn said we should get those up and that we was going to have to build a footbridge by Tank 17 so that no one would have to walk around the drain ditch.

Q. Were you told anything about who said this about installing this footbridge? A. Mr. Quinn called it to his attention after he went through the tank farm.

Q. Were these matters taken care of? A. Yes, sir. * * *

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Q. (By Mr. Avedon) Was the subject of procedure for purchasing and requisitioning discussed with you? A. Yes, sir, it was discussed from Mr. Neville that on the latter part of January or the first part of February, that requisitioning—there would no longer be required a requisition for purchasing up to two hundred dollars; up to that amount could be a verbal approval through him.

Q. Who is "him"? A. Mr. Neville would have to give the verbal approval after he consulted Mr. Quinn. Over two hundred dollars, purchases

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of any nature would have to be a regular requisition.

Q. Was anything said about to whom the articles would be billed? A. All to Union Texas Petroleum, subsidiary of Allied Chemical, with four copies, at the time of purchase.

Q. Was there any discussion with Mr. Quinn about requisitioning in your presence? A. Mr. Quinn explained the procedure.

Q. Will you tell me what he said? A. To several of us, what I just said, up to two hundred dollars a requisition would not be required unless it was—I mean up to two hundred dollars no requisition would be required. Over that there would be a normal requisition required unless it was an emergency, when we should receive verbal approval from him or Mr. Quinn or Mr. Gotcher. * * *

A. I was asked at the time—we have a designated schedule;

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staff personnel of Texas Gas Corporation would get together each Friday under the heading of Mr. Woolfolk who would preside.

Maintenance problems were brought up at the particular time, and the schedule was set down and approved by Mr. Woolfolk of when the particular jobs would be done. * * *

Q. Was Mr. Woolfolk at the plant after January 1 on a regular basis? A. No, he wasn't. I was trying to bring out the boiler feed line was on schedule to be done at that time. I asked Mr. Albritton could we proceed with it. He said, "Not at this time," that there were other changes Union Petroleum was going to make; therefore, we would hold up on that project at that time. * * *

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Q. In January of 1963 was there an incident involving a high pressure steel condenser? A. Yes. In No. 1 plant, the high pressure steel unit wasn't functioning properly, and after an inspection it was determined that the condenser—overhead condenser—needed retubing. That was the recommendation of the plant—

Q. Who made the recommendation? A. The plant chief engineer, corrosion engineer, and myself inspected that particular condensor and agreed to the restriction of it, that the tubes needed replaced. We took it to Mr. Neville's attention.

He said he would have to contact Mr. Quinn for approval for that particular project. Mr. Quinn at that time was in

Houston at some meeting and it took several hours to contact him, and permission was granted.

Q. Was the part repaired? A. And it was, yes, sir, by outside people, Ohmstede.

Trial Examiner: You said the job was done by outside people?

The Witness: Yes, sir. Ohmstede Machine Works of Beaumont. They came out, inspected it, and gave us a bid on the job, which Mr. Neville relayed to Mr. Quinn, and the approval was granted by Mr. Quinn.

Trial Examiner: The authority to enter into the sub-contracts was not yours, was that part of your job?

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The Witness: Not any authorization, no, sir.

Trial Examiner: To engage these outside contractors?

The Witness: No, sir. To recommend, yes, sir.

I was asked if our people could do it. We could, but not in that length of time, and we needed additional equipment and it was recommended, then, at that time, or discussed, rather, with the chief engineer and myself and Mr. Neville, for the outside people, Ohmstede Machine Works, to do the work. * * *

Q. (By Mr. Avedon) Did you have a conversation with Mr. Quinn about switch gear and cooling tower? A. Yes, sir, one evening.

Q. When was this? A. The first part of February.

Q. 1963? A. 1963. Mr. Siebert, who is shift foreman, and I were discussing the deteriorating of the switch gear west of No. 2 cooling tower. I said, "That is one par-

ticular job that I tried to get done for a period of years but we were still working on it, but it hadn't been accomplished."

The subject came up due to Mr. Siebert having trouble with a circuit in that locality. In the conversation,

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Mr. Quinn walked up into Mr. Siebert's office, which was next to mine, with the door open, and we got into a conversation of the switch gear, that it needed a shed over it. Mr. Quinn asked me what area was involved. I gave him an estimate of the square feet of the switch gear that needed protection and he told me that he thought Union Texas had a shed that they could put over that.

Q. Was the shed gotten? A. No, sir. * * *

A. Yes. Mr. Gotcher walked into the machine shop with me one day, just walking through the plant, more or less observing, and he asked Mr. Null how everything was. Mr. Gotcher asked Mr. Null how everything was. Mr. Null stated everything was all right except that he lacked some tools. Mr. Gotcher told Mr. Null if he would order them, he would see, Mr. Gotcher said he would see they were purchased. * * *

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Q. When Mr. Quinn wasn't there, would someone else be there from Union Texas? A. Mr. Gotcher, yes, sir, and in Mr. Quinn's absence, Mr. Gotcher had to authorize all requisitions.

Trial Examiner: One or the other was there at all times, to your knowledge?

The Witness: Yes, sir, to my knowledge.

Q. (By Mr. Avedon) I believe you testified that there would be staff meetings prior to January 1. A. Yes, sir.

Q. Who would preside at these staff meetings? A. Mr. Neville and Mr. Woolfolk.

Q. Do you know what Mr. Woolfolk's position was with Texas Gas? A. Yes, sir. At that time, Mr. Woolfolk was manager of the Manufacturing Department of Texas Gas Corporation. * * *

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Q. (By Mr. Avedon) On February 14, 1963, did you receive a call from Mr. Neville? A. Yes, sir, I was just fixing to leave the house to go to work at approximately 7:00 a.m. I was in the kitchen and my wife called me and said I had a telephone call from the plant. * * *

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Q. Did you attend the meeting? A. I attended the meeting at 8:30 — * * *

A. Then Mr. Sutherland was present, who more or less conducted the meeting and represented Union Texas Petroleum. And Mr. Woolfolk was there.

Q. Was Mr. Quinn there?

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A. Mr. Quinn was close but he was not in the room of the meeting. * * *

Q. Will you tell me what took place at this meeting? A. Mr. Sutherland told us that we would shut the plant down that day, all the men would be out of the plant as

soon as possible, with an orderly shutdown. And as of 4:00 p.m. of that day, all people present in the meeting would be on the Union Texas Petroleum payroll.

Several technical questions was asked of Mr. Sutherland. He was assisted by Mr. Woolfolk on the answers, in reference to the shutdown procedure.

I asked Mr. Sutherland if that pertained to the maintenance personnel as well as the operating personnel.

He said, "To all of them. And get them out of the plant as soon as possible. Tell them to turn in any company equipment they might have and take their personal belongings." * * *

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Q. Was anything said about leaving your equipment on?

A. In the meeting, Mr. Kruger asked if everything should be shut down and drained or what type shutdown they wanted.

Mr. Woolfolk stated he wanted an orderly shutdown but to maintain levels and pressures on the vessels, to leave No. 1 engine room running, the loading rack, leave the loading rack in operation at the Port Neches terminal. * * *

Q. Was anything said about foreman working, were foremen assigned any jobs? A. One of the shift foremen asked if they could be—I beg your pardon—they were told—Mr. Kruger was told to put the shift foremen on a schedule, at that time, to keep part of the plant running on a 24-hour schedule; but for all the shift foremen to assist in getting the word to the men

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and checking the units after they told them to walk out. That for the shift foremen not to touch any of the equipment until the men left.

Q. Was anything said about staffing the plant? A. One of the shift foremen asked Mr. Sutherland if that meant the men would no longer be there and if they would have a chance, maybe, to come back in, and he said there would be no employment office there at that time and they probably would restaff the plant with Union Texas personnel.

Q. Were you ever told what your position was after that? A. After that date, approximately the 16th or 17th of February, Mr. Quinn told Mr. Cating and myself that we would be directly under him. * * *

Q. After the shutdown, did people start arriving at the plant? A. Yes, sir. The evening of February 14, the evening between, oh, approximately six and seven o'clock, approximately six to a dozen people arrived. I can't say exactly.

Q. Have you ever seen these people before, have they ever worked at the plant before? A. No, sir, none of them. I had never seen any of them

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before. And the following day, on the 15th, more personnel arrived, and also on the 16th.

Q. By the end of the 16th—the 16th would be on a Saturday, is that correct? A. Yes, sir.

Q. How many new people had arrived at the plant? A. Approximately forty or fifty.

Q. Were any of these people put to work when they came? A. Yes, sir.

Q. What were they put to work doing? A. The electrical inspector was assisting myself in some of the problems in the plant, just, mainly, relamping the plant which, prior to that, was done by plant personnel; and the operating personnel were assigned to different shift foremen on the training program.

Mr. Albritton, the plant superintendent, was told he would be a training director in setting up a training program for the new personnel.

Q. Do you know where the new personnel came from? A. The towns, sir, I cannot say, but the majority came from Louisiana.

Q. Do you know for whom they worked prior to this?

A. Union Petroleum. * * *

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Q. (By Mr. Avedon) Was it Sunday or Monday? A. It was Sunday, to my knowledge.

Q. What happened? A. We were sitting in the coffee bar. There were several people there, Mr. Ruston, Mr. Miller.

Q. Was Mr. Ruston—can you give me the job of these people? A. Mr. Ruston is laboratory superintendent for Union Texas Petroleum; Mr. Miller is an engineer; Mr. Watson is an engineer; Mr. Hanks is an electrical inspector—all of them for Union Texas Petroleum.

A gentleman, whom I don't know his name, walked into the coffee bar and said he had just arrived and now he has to turn around and go back. Mr. Hanks asked why he had to

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go back. He says, "We have to get out of the plant by 12:00 o'clock." * * *

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Trial Examiner: You did describe Mr. Hanks' job. What was he?

The Witness: Electrical inspector, I believe that is his classification.

Q. (By Mr. Avedon) Do you know what his duties were? A. No, sir. He did electrical work. Mr. Hanks told me he did all forms of electrical work in Louisiana, when I asked him, and also inspected new installations in the electrical field. * * *

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Q. After Sunday, approximately how many people who came into the plant remained in the plant? A. Oh, approximately fourteen or sixteen.

Q. What happened to the rest of them, do you know? A. They went back to the designated—wherever they came from.

Q. When they came, did they bring anything with them? A. Personal belongings, clothing, toilet articles, work

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clothes, dress clothes; they left them in the automobiles.

Q. Do you know where they stayed at the plant? A. Some of them stayed in Pullman cars at the loading rack area at the plant, on the siding. A few of them stayed at the Hub Motel in Winnie. * * *

Q. (By Mr. Avedon) Before the shutdown on February 14, were you given any prior notice that there would be a shutdown on that date?

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A. No, sir. * * *

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Q. (By Mr. Avedon) Do you know a Mr. Pace? A. Yes, sir.

Q. Do you know by whom he is employed? A. Yes, sir, the Fluor Corporation.

Q. Did you see Mr. Pace at the plant? A. Yes, sir.

Q. When was that, the first time? A. The first part of—the month of February, the first part of February.

Q. Who was he with? A. The Fluor Corporation.

Q. No, I mean was he by himself? A. He came there by himself, and he met Mr. Quinn.

Q. Did you have any discussion with Mr. Pace and Mr. Quinn? A. I spoke to Mr. Pace.

Q. Was Mr. Quinn there at the time? A. Yes, sir. I spoke to him and we were in the receptionist's

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room there as you approach the office.

Q. What was said at that time? A. I asked Mr. Pace if he had come to do some work. He said he hoped so, he hoped to. Then I saw him again after that.

Q. After the shutdown? * * *

Q. After the shutdown of February 14, did Fluor employees come into the plant? A. After the shutdown of the 14th, yes, sir.

Q. When did they start arriving? A. Approximately the 26th or 27th of February.

Q. Between February 14 and February 26 or 27, who was doing the maintenance work, if any? A. Just a few

of us, myself and Mr. Cating and with some assistance from other supervisors where needed.

Q. When Fluor's employees came into the plant after this 25th or 27th, whatever the date was, what did they, what work did they start doing? A. They started fabricating some lines, change out some steam lines, process lines. Millwrights started overhauling an engine—routine maintenance work. * * *

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Q. Did they undertake any new construction at that time? A. No, sir, no new construction. * * *

Q. Did you work with the Fluor people? A. Yes, sir.
* * *

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Q. (By Mr. Avedon) Did you make any complaint as to the way the work was being done by the Fluor people? A. Yes, sir.

Q. To whom? A. Mr. Quinn and Mr. Gotcher.

Q. What did you say to them?

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A. That the time element involved and the maintenance that was being performed on the engines, gas engine compressors, the men didn't appear that they knew what they were doing; putting the valves in wrong, and just the way they were going about it, you could tell they didn't know their job. So, they were replaced, on several occasions they replaced them. * * *

Q. (By Mr. Ladwig) Mr. Ellis, how long did you work

at the plant after February 14? A. Oh, about a hundred days, until the 23rd of April—no, about sixty days.

Q. Until what day? A. The 23rd of April. * * *

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Q. Did you have any duties in connection with seeing to it that the work done by Fluor was expedited or done at the right time? A. Yes, sir.

Q. What was your job in that connection? A. I was assisting Mr. Cating.

Q. In doing what? A. Over-all supervision, representing the company in coordination of the work.

Q. Did you observe how the maintenance work was being carried on during that period of time? A. Yes, sir.

Q. How much of this work was merely routine maintenance work what percentage of it would you estimate? A. Well, percentagewise, sir, just practically all of it. I couldn't say, you know, what percentage, but most all of it was.

Trial Examiner: This covers the entire time up until April 23? A. Yes, sir. * * *

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Q. (By Mr. Ladwig) Did you in your own mind make a comparison—I am not asking you what the comparison was—but did you make a comparison between the efficiency of the Fluor Corporation employees doing the maintenance work with the efficiency of the plant personnel before February 14 in doing maintenance work? A. Yes, sir. * * *

Q. (By Mr. Ladwig) On what facts did you make such comparison? * * *

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On the engine overhauls I was requesting, I was using the same procedure used previously in getting data on engine overhaul.

I asked we get a distortion on the crankcase. No one was qualified to get it or knew what we were talking about at the time, that particular personnel. That is a measurement you get to show your position that the crankshaft is in

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on an engine, which is very essential before you start assembling it.

Q. Are there any other examples? A. On valves on compressors, they put them in backwards, which anyone that has ever worked on a compressor wouldn't make that mistake as often as they did; it wasn't one, but it was on a daily basis.

Q. Anything else? A. There was a time element involved. They didn't know how to go about the business without someone directly over them explaining everything to them, which, with the plant personnel, they didn't have to have any direct supervision. They knew their job. * * *

Q. (By Mr. Ladwig) You are familiar with the maintenance work that was performed at the plant from sometime after February 14 up through April 23, is that right?
A. Yes, sir.

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Q. Now, if the plant personnel had been performing that very same maintenance work, up until what date

could they have performed that maintenance work without there having to be a shutdown? A. They could have performed seventy-five per cent of it up until that date without an over-all shutdown.

Q. Well, how would it have been performed without an over-all shutdown, would you explain? A. A unit at a time, by isolating one particular area or unit.

Q. Is that different or the same way that they had performed it in the past? A. In the past, we would do it unit by unit instead of an over-all shutdown. At the present, or up until the date I left, it was an over-all shutdown, as a comparison. * * *

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VOIR DIRE EXAMINATION * * *

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Q. Now, have you ever closed any plant for the purpose of converting it to the petrochemical industry? A. No, sir.

Q. Have you ever closed any plant for a general overhaul throughout the entire plant? A. Parts of it.

Q. But never the whole plant? A. Not a whole plant.

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Q. Do you know how extensive the overhaul at this plant has been from February 14 to April 23 in the terms of dollars? A. No, sir.

Q. Do you know how extensive it has been in terms of the number of pieces of equipment that had been affected? A. Pretty close, yes, sir.

Q. Do you know to what extent new equipment has been added in terms of dollars? A. No, sir.

Q. Do you know what preparations had to be made in order to take care of new equipment on order not yet installed? A. Repeat that, please.

Q. Do you know what preparations had to be made to take care of equipment on order and not yet installed? A. Not unless I knew the job, what specific job.

Q. Well, that is the point. You haven't been consulted about the engineering design for the Winnie plant as it is being converted, have you? A. No, sir.

Q. And without that knowledge, no one could pass an intelligent judgment as to how the work should proceed, could he? A. Yes, sir, how it should proceed, yes, sir.

* * *

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CROSS EXAMINATION

Q. (By Mr. Sachse) Mr. Ellis, when did you last work for Allied Chemical? A. Approximately the 21st or 23rd of April.

Q. 1963? A. 1963, yes, sir.

Q. I understand the last time you worked for Texas Gas was February 14, 1963. A. Yes, sir.

Q. Were you—did you resign from Allied Chemical or were you let out? A. I was let out.

Q. When were you told that you were going to be let out? A. The last day of April—the last day of February—excuse me. The 28th of February.

Q. The last day of February in— A. For the last day, thirty days—let me see, the last day of March, excuse me, yes, sir, the last day of March. * * *

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Q. How was requisitioning for materials worked, done, before January 1, 1963? A. On a routine basis, it was just a formal requisition typed out for approval at the plant by Mr. Neville; and then from Mr. Neville to Mr. Woolfolk in Houston.

Q. Are you saying that it required the approval both of

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Mr. Neville and of Mr. Woolfolk? A. Yes, sir. I said routine, sir, routine requisitioning. The emergencies were handled differently. * * *

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Q. Now, who had the actual contact with Ohmstede Machine Shop, was that you, sir? A. Yes, sir.

Q. And was it your decision to talk to Ohmstede and then make your recommendation to Mr. Neville? A. No, sir. It was all coordinated in the presence of Mr. Neville. Mr. Bob Ohmstede, the owner, came out and gave us an estimate of the repairs needed and the cost of it.

Q. Yes, sir. But how did Ohmstede get in the picture in the first instance, was this your idea? A. No, sir, it was debated first whether it would be done with the plant people or have outside people come in. I was asked did we have sufficient equipment to do it with. We lacked an instrument called a rotor that particular size

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which flares a tube on the end. I inquired—the nearest place to get that would be Houston—and it would require

several days to get it. And that is how Ohmstede got involved, because they needed to get it done as soon as possible.

Q. I suppose during your several years with Texas Gas, whenever you needed equipment that you didn't have or personnel that you didn't have to do the job required, you turned to outside help, did you not? A. On occasions, when it would be great enough. * * *

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Then is it not true that new equipment could be purchased for the plant without your having anything to do with the purchase? A. Definitely, yes, sir, definitely. * * *

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Q. (By Mr. Sachse) And if the Engineering Department acquired equipment that could be warehoused in the normal manner so that the warehouseman didn't have to ask you about it, this would be no part of your responsibility? A. No, sir. * * *

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Q. I understood you had twenty-three maintenance people in your department at the Winnie plant in the period from January 1, 1963, to February 14, 1963, is that correct? * * *

A. Vaguely, twenty-three, twenty to twenty-three. The reason for the difference, sir, if you are not familiar with it, our utility section was also—consisted of laborers, also, and the laborers were relief operators. There would be days I would come to work and have four people less than I had

the day before that I was unaware of, maybe. They would automatically be contacted and moved up for relief work. It did fluctuate. * * *

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Q. (By Mr. Sachse) How many of your people were pipefitters? A. Eight.

Q. And how many were electricians? A. Three.

Q. So this would leave about— A. Four machinists.

Q. Eleven or twelve who would be covered in the unit represented by OCAW when Texas Gas operated the plant, is that right? A. Yes, sir, that is pretty close. I wouldn't say it's accurate, but it's close. * * *

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Q. Now, the instrument men, by what union were they represented? A. They belonged to the International Brotherhood of Electricians, the Electricians, the IBE, I believe.

Q. IBEW? A. Yes, sir, that's it.

Q. Now, then, I take it you didn't count them in your average number of twenty-three, did you? A. No, sir.
* * *

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Q. Now, isn't it a fact that—I will ask one question and see if we can shorten this a whole lot. Isn't it a fact the maintenance people who were represented by OCAW was not a sufficient crew for you to carry on the maintenance work in that plant after February 14, 1963, without the assistance of the electricians and pipefitters, is that correct? A. Yes, sir. * * *

A. What equipment did we get from outside source prior and after January 1, 1963?

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Q. Yes. Both before and after. A. It was portable air compressors, crane, back hoe, bulldozer, road patrol, all equipment.

Q. Just whatever you remember? A. Yes, sir. Chemical treating. That pretty well takes care of it.

Q. Would it be fair to say the Fluor people had and utilized such equipment after they came on the job? A. After they came on the job they still had to rent an air compressor, back hoe, also acidizing equipment, or chemical treating equipment; they had a cherry picker and crane.

Q. A what? A. Cherry picker and crane is about all.

Trial Examiner: That is a form of crane.

Q. (By Mr. Sachse) Do you know whether Fluor rents or buys its equipment or whether it rents some and buys others? A. Well, they own some. They rent some. And the equipment they own, they buy.

Trial Examiner: This relates to what Fluor did while you were there in the plant?

The Witness: Some they rented, some they owned. * * *

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Q. I understand that on several occasions Mr. Neville told personnel in your presence that Texas Gas Corporation had contracted maintenance and operations of the plant for Union Texas Petroleum which could be cancelled from

either party with fifteen-day notice, is that correct? A. Correct, sir.

Q. Can you remember when those occasions were when Mr. Neville told you that? A. The first time was right after the first of the year. The dates, sir, it would strictly be a guess. I would say it was the right early part of January and it was effective, and he said it was effective the first of January.

Q. He did? A. Yes, sir.

Q. When did he tell you that, again? A. Oh, I would say for awhile there were several days when he mentioned it to different people throughout the plant, and incidentally, those people are present.

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And also, after that, I would say maybe weekly intervals, when he was approached with the question.

Q. You would say he kept all of you pretty well informed of that fact? A. Yes, sir.

Q. Do you know whether or not any of the former Texas Gas employees who worked in your Maintenance Department now work for Fluor? A. In the Maintenance Department?

Q. At Winnie. A. Yes, sir.

Q. Do you know how many of them? A. Ten. * * *

REDIRECT EXAMINATION

Q. (By Mr. Avedon) Which of these—you say ten people work for Fluor who had originally worked for Texas Gas, is that correct? A. Yes, to my knowledge. I wouldn't swear it was ten, but to my knowledge it was ten.

Q. Which category of employees were working? A.

Pipefitters and welders, which would be eight, and two electricians.

Q. How about the people working in the OCAW unit, are any

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of them working for Fluor? A. One.

Q. What was his job? A. Excuse me. He wasn't OCAW.

Q. In other words, the answer to that question is what? A. Ten. There is one other employee, but I don't believe he was a member of OCAW. Just ten. * * *

Q. (By Mr. Avedon) Explain your answer, please. A. Our utility leaderman didn't belong to the OCAW.

Trial Examiner: Because he was a supervisor?

The Witness: No, sir, just because he didn't belong to OCAW. At one time, he belonged to a Carpenters local.

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W. D. TAYLOR * * *

DIRECT EXAMINATION

Q. (By Mr. Ladwig) Will you state your name, please?

A. W. D. Taylor.

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Q. (By Mr. Ladwig) Have you ever worked for Texas Gas Corporation? A. Yes, sir. * * *

Q. What were you when you last worked there? A. Utility operator. * * *

- Q. (By Mr. Ladwig) Were you laid off? A. Yes, sir.
 Q. What date? A. February 14.
 Q. Were you rehired?

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- A. Yes, sir.
 Q. What date? A. May 21.
 Q. In what classification? A. Engine operator B. * * *
 Q. Had you ever done similar work to that of an engine operator B before? A. I had performed vacation relief on 1-C compressor operator's job before, and that is virtually the same job.
 Q. That is first-class compressor operator? A. Yes, sir. * * *

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- Q. (By Mr. Ladwig) Physically, where do you work now? A. I work in No. 1 compressor building of the Winnie plant.
 Q. When you worked there as an employee of Texas Gas, what were your duties? A. As a utility operator?
 Q. No. When you were relieving as a first-class compressor operator. A. They were the same as they are now. As far as I can tell, there is no difference.
 Q. Would you explain what your duties were while you were working as relief first-class compressor operator?
 A. In this first-class compressor business, we have fourteen engines, eight casing head engines, six booster engines; we let the casing head off the field and boosting it to low pressure, Absorption No. 1 plant. All right, now your booster compressors, your high pressure gas comes in through the meter run to the plant; it separates; part goes to No. 1

and part goes to No. 2 plant. Your booster engines are taking suction off your high pressure absorbers and this gas, after this gas has been stripped gas is pumped to your sales lines, your high pressure and

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casing head, after it's been stripped through the absorbers. It leaves the plant in three or four different sales lines.

Q. What other duties did you have? A. Well, just watching the operation of the unit, of the engine, observing, keeping your pressures up, your field pressures down, and just general operation of the engine room and the various sales lines.

Q. You have just related now some of the duties you had when you were acting as a first-class compressor operator working for Texas Gas. How much of that description would apply to your present duties as an engine operator B? A. All of it.

Q. Now, is there any difference that you can think of in any way between the work that you are now doing and what you did before? A. The only difference I can think of, we are flowing one line different now. We used to boost that line. For the past month we have been flowing it off the suction pressure and we had had automatic lubricators on all engines, had floats on the compressor lubricator boxes to maintain the proper level. Now we have to pour oil twice a shift in the compressor cylinder boxes on these engines with the exception of 12 and No. 8. And we have to pour oil on both ends of these engines.

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Q. To that extent, there is less automation. It was automatic before and not now? A. To that extent, yes.

Q. In filling these engines with oil, does that require a great amount of skill? A. No, sir.

Q. Does it require any particular skill? A. No, sir.

Q. What other work have you done since you have been back there on May 21 which would not be within the classification of first-class compressor operator under Texas Gas? A. I have, with the assistance of my chief operator, I have changed suction valves and discharge valves on compressors of these engines.

Q. How much skill is involved there? A. Well, I believe anybody could do it that knows how the valve is put in and how it comes out.

Q. Any other differences in your duties? A. No, sir. ***

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CROSS EXAMINATION * * *

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Q. You have nothing to do, then, as I understand what you are saying, with what products are taken from the gas and made from the gas while the gas is in the Winnie plant? A. No, sir.

Q. What is a vibra-switch? A. A vibrator switch? That is a switch on the engines that if an engine gets enough vibration in it, it will throw this switch, close your fuel valve and shut your engine down.

Q. You had those before, did you not, while Texas Gas had the plant, is that right? A. That's right.

Q. What has been added to control the temperature of the engine water? A. They have the piping for individual jacket water control on each engine. The way I understand it, they will have fresh water going in which is jacket

water, to each engine to maintain temperature control on each engine when they get it hooked up.

Q. To lighten your work? A. Well, I don't actually see how that will lighten our work.

Q. Well, you do see how it's intended to make an automatic control? A. Yes, I see that, yes. * * *

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What is your wage rate now? A. \$3.06.

Q. What was your wage rate when you were terminated by Texas Gas? A. As a utility operator?

Q. When your services were terminated, wasn't it the same, \$3.06? A. \$3.06, that's right. * * *

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A. J. MACK, JR. * * *

DIRECT EXAMINATION

Q. (By Mr. Ladwig) State your name, please. A. A. F. Mack, Jr. * * *

Q. Were you laid off on February 14? A. Yes, I was. * * *

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Q. Have you been rehired or hired since then? A. I was hired May 21 as loader A.

Q. What is the difference, if any, between the rack man and loader A? A. None that I can tell.

Q. Will you describe what your work was as a rack man, working for Texas Gas? A. Blending and transferring finished gasoline with the exception of the leading of the gasoline, which is done by the laboratory; the handl-

ing of products coming into the plant to be used for charge stock; the pumping and transferring of finished products from the plant to pipe line, loading butane, propane, and so forth, through loading racks on trucks and tank cars; loading gasoline on tank trucks, and so forth.

Q. What difference has there been since you have gone back there as a loader A, in your duties? A. Actually, none.

Q. What products are now being produced that are different from those produced when you were working for Texas Gas? A. None. * * *

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CROSS EXAMINATION * * *

Q. Did you receive termination pay from Texas Gas after February 14? A. Yes, sir, I did.

Q. Do you mind telling me what you did between February 14 and May 21? * * *

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A. I immediately acquired some letters of recommendation from the officials of Texas Gas and applied at several companies around that area. And later on went to work for my next door neighbor, who is a building contractor, and I worked for him, with the exception of about two weeks of March, April and up to the time I came back to work there at Winnie plant. * * *

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Q. I guess it's true, is it, Mr. Mack, that when you applied for a job with Union Texas and got it, that no one

inquired of you whether you belonged to the union, did they? A. No, sir. * * *

EXAMINATION

Q. (By Trial Examiner) The products that you handled in your job, before and after, that is, when you were employed with Texas Gas Corporation and in your more recent employment with Union Texas, the same way, were they packaged the same way, I mean any of these products in solid form? A. No, sir.

Q. They were all in liquid form? A. Yes, sir.

Q. And were you able to know during both periods what the contents of the products were? A. Not as far as chemical analysis of the products, not always, at least.

Mr. Estes: I am terribly sorry. I didn't hear the question.

Trial Examiner: Read the question and the answer.

(Question and answer read.)

Q. (By Trial Examiner) Can you clarify that, briefly?

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In what instances were you able to know the contents?
A. When I worked for Texas Gas Corporation there were some products that we loaded, that we had specification sheets, on the particular products we were loading, because they had to come within a certain specification and that way we knew whether our benzene concentrate had six per cent benzene in it or seven per cent. But as far as some of the products, we didn't have that information available to us.

Q. Do you have that same procedure now with Union Texas? A. The only thing that we have now is a daily

gauge sheet which has the tanks marked on it, whether they are O. K. for sale or off spec., and so forth.

Q. In your employment with Union Texas, you do not know the contents? A. The product I referred to, the benzene concentrate, is the only one I can think of, off-hand, that we knew the content of the product, itself, and this is only—this benzene concentrate has only been made since yesterday. We started making it yesterday. There have been no tank samples run for loading, so, therefore, I don't know whether the situation will be the same or not.

Q. Other than benzene concentrate, in your employment with Union Texas do you know the content of the products? A. No, sir.

Q. Except their general classification?

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A. If it's O.K. or off spec. * * *

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EDWIN EKHOLM * * *

DIRECT EXAMINATION

Q. (By Mr. Sachse) You are Mr. Edwin Ekholm, is that correct, sir? A. Yes, sir.

Q. How old are you, sir? A. Thirty-seven.

Q. Have you had any formal education, sir? A. Yes, sir.

Q. What was it? A. I was graduated with Bachelor of Chemical Engineering from Georgia Tech in 1946.

Q. What has been your experience since then?

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A. For about eleven years.

Q. Professional experience, I mean. A. Professional experience, for about eleven years following graduation from college, I was an employee of Humble Oil & Refining Company as a petrochemical specialist. Subsequent to that time, I entered private practice as a consultant in the same field.

Q. With whom, sir? A. The Pace Company.

Q. Where are they located? A. Here in Houston.

Q. Are you now employed by Allied Chemical Corporation? A. Yes, sir.

Q. In what capacity? A. I am the technical director of the petrochemical section.

Q. When did you receive that employment? A. It was effective December 15, 1962.

Q. To whom do you report in the company? A. I report to Mr. W. A. Beman, the vice-president in charge of the petrochemical section, or in his absence, directly to Mr. Marshall.

Q. You mean Mr. Howard Marshall who testified here yesterday? A. Yes, sir, president of the Division.

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Q. Where is Mr. Beman now? * * *

Q. Have you been consulted about this acquisition of the Winnie plant by Allied Chemical Corporation? A. Yes.

Q. When? A. In late 1961, I believe.

Q. How did it happen that you were consulted about it, Mr. Ekholm? A. At the time the subject came up, my consulting firm was rather deeply involved in the studies surrounding this Baton Rouge petrochemical complex which Mr. Marshall mentioned in his testimony. It was only natural that we would be asked to look at the complica-

tions of this Winnie facility, as to how it would fit into the plans for that complex.

Q. You know, do you not, that the Winnie plant was acquired by Allied Chemical on December 31, 1962? A. Yes, sir.

Q. Do you know what plans have been made and are being made with respect to the Winnie plant? A. Yes, sir. This is my primary responsibility as technical director of the division.

Q. Well, what are those plans? A. In a word, Mr. Sachse, we wish to get out of the gasoline and energy products business at Winnie to the extent we can

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to utilize the products in specialties and petrochemicals that particularly suit Allied's needs.

Q. What are aromatic hydrocarbons? A. The term comes from the fact that they have a peculiar smell. All of them that are associated with the so-called benzene ring—benzene being one of the more common petrochemicals—the chemical formula is C_6H_6 , for what this is worth.

Benzene was originally recovered from coal tar. Within the last ten years there has been a significant switch, and now the principal source of benzene and the various benzene derivatives is petroleum materials as opposed to coal tar material.

Trial Examiner: Did you say that benzene is a petrochemical in a generic sense?

The Witness: Yes, sir. It meets the qualifications.

Trial Examiner: And it is a refinery product?

The Witness: Benzene is made by many refineries, but

it would not be fair to call it a refinery product because it's essentially a pure compound. This is a so-called nitration grade, has very stringent purity specifications. The sum and substance means that the material you produce and call benzene, better than ninety-nine per cent of it has to actually be benzene, C_6H_6 .

Trial Examiner: Is it commonly derived from refinery

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processes as a direct product or by-product?

The Witness: It's never derived as a by-product. It is becoming fairly common for those in the refinery industry to enter the production of benzene.

Trial Examiner: The reason I asked, I thought the term benzene was mentioned as one of the products of Texas Gas Corporation.

The Witness: Well, let me make one word here clear. The word "benzene" as you will see it used in connection with Texas Gas refers to a stream which was called benzene concentrate around here. This is a contraction of a word which I coined for Texas Gas, because I happened to put them in this business, benzene precursor concentrate. If you will recall, the gentleman who spoke of the benzene concentrates, that it is six per cent, that may not have registered at the time, but the material that is called benzene concentrate at Winnie is not a benzene concentrate. It is a narrow boiling fraction from light gasoline which has a concentration of such benzene as is naturally occurring in the crude oil plus the things which can be processed to form additional benzene. Do I make myself clear?

Trial Examiner: Is the percentage of the benzene in the mixed product?

The Witness: The so-called benzene product only has six per cent benzene in it. After catalytic conversion, it would

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have something on the order of sixty per cent benzene which, of course, calls for, following the catalytic treating, would call for extracting and purification to get it up to the 99.5.

Trial Examiner: Can it be classified as a petrochemical?

The Witness: To a certain extent, Mr. Examiner, this depends on the point of view. Oil companies tend to be somewhat lax about the use of the term petrochemical, more so than those of us in the chemical industry.

Texas Gas, with a perfectly clear conscience, called this stream a petrochemical. By most conventional standards—and I would like to return to that in just a second—this stream is not a petrochemical, but rather, is a feed stock from which petrochemicals can be derived.

The most common definition that you will find for petrochemicals today is that it is a pure compound or or simply a clear compound which is derived from petroleum or natural gas by some combination of processes and which said petrochemical is then further processed into useful end products.

The big volume consumers of petrochemicals, by the way, are plastics, synthetic fibers, nylon being one of the classes here, synthetic detergent soap, and rubber. These are the common petrochemicals.

But to differentiate, this benzene precursor concentrate, to my way of thinking, from a chemical point of view, this

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benzene concentrate as it has been called by Texas Gas is really not a petrochemical. It is a feed stock to petrochemical facilities, and after it has been processed by someone it is—it does meet most definitions of petrochemicals.
* * *

Trial Examiner: How about hexane solvent, is that a petrochemical?

The Witness: Once again, this is one that has changed with time. Am I boring you? * * *

Trial Examiner: No, you are not snowing me.

The Witness: To begin with, the specifications on these things has changed with time. About fifteen years ago, for purposes of talking, let's talk about the first five years after the close of World War II. There were only two or three companies in the United States that made a so-called

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hexane solvent. At that time it had to be free of sulphur, smell sweet, relatively narrow boiling; it was used in solvents, it was used in paint and varnish industry, I believe.

One of the more attractive outlets for this particular material, though, was the food processing industry. Soybeans, you know, they extract soybeans with this hexane solvent.

The pressure of competition led them to narrow the boiling range. If you will remember, Mr. Marshall spoke of these things as a matter of give and take and there are tighter specifications, and you have only so much leeway. We narrowed the boiling range in about 1950 from what was called a ten-degree spread, from the lightest boiling to the heaviest boiling in this solvent down to a six-degree spread, and this became a standard throughout the industry. That is now considered to be a marginal grade of hexane. It's typical of the hexane that is produced at Winnie with the facilities as they now have them within the Winnie plant proper.

Trial Examiner: That is now?

The Witness: Yes.

Trial Examiner: And under Texas Gas Corporation, the same?

The Witness: Yes, the same.

But the problem is that this material is no longer a saleable solvent. This solvent market in the course of the last six months—I think this is a fair statement of time—

in the course of the last six months, the Food and Drug Administration has passed very stringent laws about the proposition of that solvent which can be used to process the soybeans, and as a result, it is no longer possible to use this material which has been produced at Winnie in the past, and for which there are now facilities to produce it. It's just no longer possible to use it commercially. That market has evaporated. It has been replaced with a much higher quality product that requires two distinct processing

sequences to make it into a solvent or petrochemical, if you will, that is suitable for use in a food application.

Trial Examiner: But I thought you indicated the hexane solvent produced now is the same as that produced under Texas Gas Corporation.

The Witness: Yes. Insofar as Winnie goes. But—

Trial Examiner: We are just concerned about Winnie.

The Witness: Except that material as it is produced at Winnie now is taken to other facilities and processed at considerable expense, and this will continue until the necessary facilities can be installed at Winnie. It's the only way we can protect our market, so we have to go by another man's processing facilities for six months until our own processing facilities are ready. So you will continue to see low grade—I am using this term to differentiate it—you will continue to see low grade normal hexane shipped

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from Winnie, but it's being shipped to another processor who processes it, and then he, in turn, delivers it to our customer.

Trial Examiner: This is one of your projections, that six months—within six months from now, say, this process will be brought to Winnie?

The Witness: Oh, this is more than a projection. It's a guarantee on our part that we will, yes, sir. And this—well, the term for using another man's facility to work on your feed stock is sometimes referred to as toll processing. You are hiring another man's factory to process it, so to speak. This is strictly a stopgap measure until our own facilities are ready. * * *

Q. (By Mr. Sachse) Mr. Ekholm, at the time the Winnie plant was purchased were there expenditures planned by the company for the Winnie plant in addition to the money that it would cost to purchase it? A. Yes, sir.

Now, you must understand that I speak actually not as an employee of the corporation at the time some of these things all happened; but basically, there was an overall plan for the use of Winnie as a source of a variety of petrochemicals by Allied Chemical, and this was carried into the original

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valuation of the Winnie facilities itself.

Q. Do you know, sir, what that plan was in terms of dollars? A. Yes, sir.

Q. What was it? A. Well, at one stage, at the time that this project was carried to Allied's management, at least at one time that it was, in October of 1962, there was stipulated six million dollars of additional expenditure at Winnie for conversion of the facilities from this existing refining natural gasoline operation into a petrochemical raw stock operation.

Trial Examiner: This is merely in terms of a proposition or planning, it wasn't expended, it was allocated?

The Witness: It was allocated, but the allocation was made, the agreement to enter into negotiations with Texas Gas for the purchase of that facility included an agreement that six million dollars was to be expended to convert those facilities from the existing type operation to an operation which more nearly suited Allied's purposes as a source of raw material.

Trial Examiner: This was not an agreement with Texas

Gas but was an agreement within the company, Union Texas?

The Witness: Well—

Trial Examiner: Agreement with whom?

The Witness: This was, well, it was an authorization by the Board of Directors of Allied Chemical. * * *

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(The document above-referred to was marked Respondent's Exhibit No. 5 for identification.)

Q. (By Mr. Sachse) And I now show to you and ask you what it is. A. Mr. Sachse, this is a flow diagram of the Winnie plant in a stylized form which was prepared under my direction, to give some general idea of how we plan to spend that six million dollars, plus some other monies that have arisen subsequently.

Q. All right, sir. Now, will you please explain this, and I will give one, the large copy to the Trial Examiner, and will you explain it from the small copy?

Trial Examiner: Well, this is not admitted. I don't want to look at it yet.

Mr. Sachse: I offer it into evidence.

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Mr. Avedon: May I ask a few questions just so I can understand what this diagram is?

Mr. Sachse: Yes.

Mr. Avedon: This is a projection of how the plant will operate as of February 1, 1964, is that what this is?

The Witness: Yes.

Mr. Avedon: In other words, this is what you hope or intend to have operating at that time, the processes that will be in effect then, is that correct?

The Witness: This is what we have promised the Allied Board will be in operation.

Mr. Avedon: When you say "we," you mean the engineering and chemical staff?

The Witness: Yes.

Mr. Avedon: That the plant will be operating as indicated here at that time?

The Witness: Yes.

Mr. Avedon: This was made up under your supervision and control?

The Witness: Yes.

Mr. Avedon: I have no objection.

Trial Examiner: There being no objection, Respondent's Exhibit 5 is admitted.

(The document above-referred to heretofore marked Respondent's Exhibit No. 5, was received in evidence.)

Q. (By Mr. Sachse) Will you please explain it? A. For your guidance, basically, there are some simple square blocks that are uncolored or uncrosshatched, which indicate the distinct facilities as they are grouped in process category at Winnie. You understand this is neither a process flow sheet nor is it a plot plan or a map. This is a

schematic thing which shows the arrangement and perhaps the relative importance of some things which will be going on here. Basically, at Winnie, they have these two gasoline absorption plants plus this fractionation which works on light crude oil plus a catalytic reformer which upgrades the gasoline. These things are all shown in white. We add here the facilities as they have now been laid out, which will be added at Winnie and which will change the complexion of the Winnie plant considerably.

Trial Examiner: Now, the portions—the boxes here which are colored in red are the projected changes and those in white are the existing—

The Witness: Yes, sir.

Trial Examiner: —facilities generally described?

The Witness: Yes, that's correct.

Trial Examiner: And the projected date for the final completion is February 1, 1964?

The Witness: Yes, sir. That is a commitment that

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Union Texas Petroleum has made to the corporation.

Trial Examiner: When was this prepared?

The Witness: This particular drawing, as you see it here, was prepared perhaps a couple of weeks ago. Actually, it's made, with two minor changes, it's taken directly from the original evaluation of Texas Gas and that drawing was prepared in, shall we say, perhaps September of 1962.

Trial Examiner: Before the negotiations?

The Witness: Yes.

Q. (By Mr. Sachse) What are the additions, Mr. Ekholm? A. Well, there are two overriding factors that we hope to come from these additions.

Q. What I mean sir, the additions from the drawing as it went to the Board of Allied? A. Oh, what two additions?

Q. Yes. A. If I may point to this for your benefit—

Trial Examiner: Pointing won't help the record.

A. (Continuing) The normal paraffin plant is a project which was conceived in the spring of this year and which will be in operation in the fall of this year, and is approved by Allied Chemical to capitalize directly on the fact that they have the Winnie plant.

Q. (By Mr. Sachse) Now, that is the item that is indicated at the top of the page?

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A. Yes, sir.

Q. And N-Paraffin \$850,000? A. Yes, sir.

Q. What is the other one? A. The other one is the addition I believe—I believe it is an addition—no, I'm sorry. There is an addition on a different version of this which you will see later. There is only that one significant—

Trial Examiner: There is only one?

The Witness: I stand corrected.

Trial Examiner: There is only one change from the original drawing?

The Witness: Yes, sir.

Trial Examiner: The original evaluation, as you term it, of September 1962?

The Witness: Yes, sir.

Trial Examiner: And that is this paraffin item?

The Witness: Yes, sir.

Trial Examiner: Well, let me ask you now, I am sure this will come out, but are these changes being effected according to schedule thus far?

The Witness: Yes, sir, we have had a great deal of difficulty in devising a suitable schedule, as you can imagine, but everything is on schedule. Actually, heavy field work—by that I mean contractors will be moving

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into the field to do heavy construction this month. * * *

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Trial Examiner: Will it tie in, since Mr. Ekholm has testified that the projection to February, 1964, as of this time is accurate and they expect to be on schedule, that he is aware from time to time, perhaps from week to week or from month to month, just where along the line the program is being fulfilled?

The Witness: Well, the program is being fulfilled to this extent, sir. We have eliminated all of the engineering details and we are now ready to pick up the shovel, field construction starts this month.

Trial Examiner: Well, you are going to have other witnesses on that?

Mr. Sachse: Yes, sir. Mr. Ekholm is the technical director. We will present the engineer later on to show you what has been physically put in place. * * *

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"Certified extract from minutes of meeting of the Board

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of Directors of Allied Chemical Corporation.

"Mr. Brown stated that Union Texas Petroleum Division has been seeking entry into the natural gas market in a highly industrialized area of Orange, Beaumont and Port Arthur, in eastern Texas, and has reviewed the operations of Texas Gas Corporation which supplies twenty per cent to twenty-five per cent of the 900,000,000 cubic feet per day of industrial gas sold in the area. The Texas Gas acquires its gas under long-term contracts and does not own any gas-producing properties. That Texas Gas and Texas Gas Pipeline Corporation, a wholly-owned subsidiary, own and operate a natural gas liquids plant and gasoline refinery at Winnie, Texas, a terminal at Port Neches and a gas collecting and distributing system with four hundred miles of pipe line in the Beaumont-Port Arthur area; that gas liquids removed from natural gas are sold as LPG, except for natural gasoline and concentrate, which are processed and sold as gasoline; that Union Texas as a major producer, with substantial natural gas reserves with no outlets in the area, is in a good position to strengthen participation in the growing markets now served by Texas Gas, and could improve on the latter's operations by producing higher octane gasoline and by recovering aromatic chemicals for other Allied divisions; and that the acquisition of Texas Gas and its subsidiary is particularly desirable because it would provide an immediate

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entry into a growing market for locked-in reserves of Union Texas.

Now, you might put an asterisk to show a portion omitted, as agreed. Then:

"That following acquisition of such assets, it would be proposed to install facilities in the natural gas plant at an estimated cost of six million dollars—" That is a dollar mark and the figure 6, and the word million is written out—"to produce aromatic chemicals and to upgrade gasoline, bringing the total investment to twenty-seven and a half million." That's written with a dollar mark and the figure 27.5 million.

"And that the amount so spent to produce aromatic chemicals at Winnie would reduce expenditures of about twice that amount which would otherwise be spent for the same purpose at Geismar, Louisiana."

Now, some more asterisks, and then:

"Mr. Brown stated further that the pre-tax income of Texas Gas Corporation now approximates 2.6 million on sales of twenty-seven and a half million." There is a dollar mark there. "That it is estimated by 1964 sales revenues will increase to approximately forty million dollars and that with increased efficiencies pre-tax income will be increased to five million dollars per year."

That is all.

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Mr. Avedon: General Counsel will stipulate that the

portion of this document as read is correct as Mr. Sachse has read it.

Mr. Sachse: The certificate is:

"I, Richard F. Hansen, Secretary of Allied Chemical Corporation, hereby certify that the foregoing is a true extract from the minutes of the meeting of the Board of Directors of said corporation duly held on October 25, 1962, and that the same has not been rescinded or modified in any way.

"In witness whereof, I have subscribed my name and affixed the seal of said corporation hereto, this 15th day of November, 1962."

Signed Richard F. Hansen—H-a-n-s-e-n.

Trial Examiner: The parties so stipulate the admission.

Do you join in the stipulation, Mr. Ladwig, I assume?

Mr. Ladwig: Yes, sir.

Trial Examiner: The stipulation is admitted. * * *

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Mr. Sachse: Well, to complete the record, General Counsel agrees that we will add to the stipulation the following:

"After discussion, and on motion duly made and seconded, it was resolved:

"That the proper officers of the corporation be and they are authorized to negotiate an agreement for the acquisition by this corporation of the assets of Texas Gas Corporation and Texas Gas Pipe Line Corporation on the basis outlined at this meeting, with the understanding that such

agreement will be submitted to the Board of Executive Committee for approval prior to commitment."

Trial Examiner: It is stipulated that this further portion be included as part of the stipulation of the minutes of the Board of Directors as of October 25, 1962?

Mr. Avedon: Yes, sir.

Trial Examiner: The stipulation is admitted. * * *

Q. (By Mr. Sachse) Mr. Ekholm, it has been put in evidence

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that the company bought this plant December 31, 1962. had the engineering necessary for the conversion been performed at that time? A. No, sir, it had not. Presumably this was one of Allied's incentives for asking me to join the organization, the recognition that they planned to spend considerable sums of money in the petrochemical field. And actually, my first task upon joining Allied was to review the status of this particular project.

And it was my considered opinion after a quick survey of the status of the project, that Union Texas Petroleum management had misconstrued the extent to which engineering was available for immediate use in the field. There had been a great deal of valuable planning done; there had been a great deal of pre-engineering done. It was possible to extract from Texas Gas Corporation files some additional engineering, and it was thought that this would be adequate to permit moving immediately into the field with these projects. This simply was not the case.

Q. Where had you been in the early part of December, 1962? A. Well, my last consulting assignment in private

practice took me to Europe, and actually, bad weather interfered with my return; from, say, approximately the middle of November until December 18 I was away from the city and completely out of touch with Allied Chemical. And so, it was not until

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that week of December 18, which I believe was about a Tuesday, it was not until that week that I actually had an opportunity as an employee in a responsible supervisory position to sit down and assess the status of the engineering work.

Q. Now, did you make a report to Mr. Howard Marshall about your findings in this respect? A. Yes. There were discussions with several of the management group of Union Texas Petroleum, including Mr. Marshall. And the gist of my contention was that we simply were not ready to undertake heavy field construction at that time, and that it would simply have to be postponed.

Trial Examiner: What was the time, what was the date of the report that you gave Mr. Marshall?

The Witness: This was an oral report. It was Christmas week.

Trial Examiner: You came back December 18 and you rendered your report within a week?

The Witness: Yes. This became readily apparent to one skilled in the art that the status of the engineering was not satisfactory.

Trial Examiner: This Exhibit 5, when was that prepared, the original evaluation referred to in the record, you said in September. That preceded the Board of Directors' meeting?

The Witness: That was prepared as an exhibit for the

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Board of Directors' meeting.

Q. (By Mr. Sachse) Mr. Ekholm, when did you begin to get the actual plan to make this conversion, when did they begin to come through? A. It was not until after the first of the year.

Q. Would that be in the month of January or the month of February? A. We were at least beginning to develop something tangible in late January, yes.

Q. Do you know Mr. Woolfolk? A. Yes, sir.

Q. Mr. Woolfolk is currently a man who bears the title of project manager, and reports to me. He formerly was the manager of manufacturing for Texas Gas Corporation, prior to the acquisition of the Winnie facilities by Union Texas.

Q. Now, after he came into the employ of Union Texas, did he have anything to do with the production at Winnie plant or only to do with your planned conversion? A. Naturally, Mr. Woolfolk's long association with production operations made it a normal thing for his former associates in Texas Gas to call upon him for advice and for information. But he was specifically instructed, and repeatedly, by me, that we were to concern ourselves solely with the capital expenditures program at Winnie.

Q. So far as you know, did he comply with your instructions?

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A. Yes.

Q. Now, sir, I have marked, and I have exhibited to

counsel for General Counsel and counsel for the Charging Party a document, or rather a chart—I have marked this as R-6, and I ask you what it is.

(The document above-referred to was marked Respondent's Exhibit No. 6 for identification.)

A. This is a product slate which was prepared under my direction within the last two weeks.

Incidentally, it is a product slate that was originally prepared for presentation at this Allied Board meeting in much the same fashion as Exhibit R-5. There has been one significant change. Acting upon direction of my management, I have deleted the absolute figures of volume, which had in the past been expressed in both units of volume and monetary units, for the reason that they did not substantially influence our purpose on this chart, and they did reveal considerable economic and commercial information that they preferred not to reveal. * * *

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Q. (By Mr. Sachse) Now, this product slate simply puts the word "no" as to the present products of the plant, and counsel has asked you whether some of this was made or could be made on the blending platform at the Winnie plant.

Now, will you please tell us what you know about this

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point, giving it full explanation of it. A. Yes. Well, first of all, we are not speaking of individual shipments. Refineries tend to be rated in terms of their potential to

produce without outside assistance to a given pool level at a reasonable economic level. This refinery, and I think you will find that you can get outside corroboration of this—this refinery operation was rated as a 98 octane premium, 90 octane regular operation. They did have octane limitations.

In addition to the octane limitations, they had, when they went to the higher qualities, we imply here, and you are not in a position to infer, and so I should mention this as an extra incorporation, we imply, when we speak of a 98 octane premium, we imply that this premium gasoline would not meet all of the specifications normally imposed by the major oil companies on their gasoline. In other words, it is — the octane number is achieved as a result of the imbalance with other properties.

As a plain point of fact Winnie gasoline I believe was not subject to wide trade with majors, such as they trade among themselves. You can supply the octane number, but you cannot meet some of the other specifications because of the intricacies or the peculiarities of the blend which led to the manufacture of the gasoline.

Now, you say to me, "Can they make 100 octane gasoline?"

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Yes, I rather imagine they can. They have on occasions. They, to my knowledge did purchase toluene to provide additional octane boost. But basically that refinery with its existing platformer equipment, its existing fractionation equipment was capable on a sustained basis of operating at a level of 98 octane premium and 90 octane regular.

Now, there is one thing I am not authorized to disclose here, and that is the ratio of these products. One bucket of 100 octane gasoline would satisfy your requirement for a yes. And I have ignored that.

Now, what is implied by these numbers — and to this extent it is perhaps misleading to the layman; we tried to pick the one quality that the layman would most likely be able to recognize. What is implied here is the difference in the quality of the total gasoline. The 98 premium, 90 regular is a reasonable number for that refinery.

Trial Examiner: Would you say that the Winnie plant about January 1963 was capable of producing 100 octane gasoline on a sustained basis or a substantial quantity of 100 octane gas on a sustained basis?

The Witness: I believe they were not. They were not in position to do that.

Trial Examiner: With or without additives?

The Witness: It would require additives.

Trial Examiner: Without additives they would not be

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able to produce any?

The Witness: Sustained basis, sir?

Trial Examiner: On a sustained basis.

The Witness: Yes. * * *

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Q. (By Mr. Sachse) Please look at Exhibit R-6 and mark on the exhibit, if you will, the products which you consider

to be energy products and the products that you view as petrochemicals. A. Yes.

Q. And I suggest that you use an "E" for the energy and "PC" for the petrochemicals, and will you mark it in ink, please? * * *

Q. (By Mr. Sachse) Then, let me ask you—now, you have

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marked the items as I requested you to, but I notice that you put a ring around the "E" that you put opposite hexane solvent, low grade, and you put a ring around the product that you have marked with an "E" that is benzene precursors. Please explain the reason for this different designation. A. Yes. These materials have a vanishing market. The low grade hexane solvent is virtually unsalable now, as such. Despite the fact that we call it hexane solvent, its value boils down to its value when put back into motor gasoline. To that extent it is an energy product. However, it is available and can be further processed into a suitable petrochemical.

Q. Could it be so processed with the equipment at the Winnie plant before the purchase of the plant by our company? A. No, sir.

Q. Is equipment being added now which will permit this further processing to produce that result? A. Yes, sir.

Q. Now, do your comments relate both to benzene precursors and hexane solvents, or do you have additional comment? A. The same comment applies to the benzene precursors. This is a narrow fraction out of light gasoline as it is now produced at Winnie. It's not a petrochemical until it

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has had considerable additional processing.

Q. Now, sir, in the light of the definition you gave while ago of what a petrochemical is, and after examining the products in R-6 and the flow diagram of R-5, will you please state whether or not Texas Gas was producing products salable as petrochemicals as of the end of the year 1962? A. No, not by any definition.

Q. And is your definition that which is currently acceptable in the trade at the present time? A. I believe so. * * *

(The document above-referred to was marked Respondent's Exhibit No. 7 for identification.)

Q. (By Mr. Sachse) I will ask you what this is. A. This is another block flow diagram or chart prepared

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under my direction.

Mr. Sachse: In connection with the witness's testimony, I offer to produce and file in evidence the document which he has identified and which is marked as Exhibit 7, and then I will ask for an explanation.

Mr. Avedon: When was this R-7 prepared?

The Witness: The original of this drawing, the blocks themselves, was conceived at the same time that the Allied Board meeting material was prepared, last September.

Mr. Avedon: I note a little legend: "Awaiting engineering."

The Witness: Yes.

Mr. Avedon: That was prepared at that time, is that correct?

The Witness: Uh-huh.

Mr. Avedon: Is this R-7 shown as part of R-5, in other words, would the flow process on R-5 appear on R-7?

The Witness: No. It is an addendum to R-5. This shows you the thing that we wish to do next.

Mr. Avedon: I take it that this is a modification of R-5?

The Witness: It represents a further addition, a further step toward the elimination of gasoline, to produce petrochemicals specifically for Allied Chemical. * * *

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I believe that the intent here is to show you what our forward thinking is about Winnie. We have no plans with regard to making that a gasoline refinery. The whole idea is to try to show you what we are trying to do to make it a petrochemical refinery. * * *

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(The document above-referred to, heretofore marked Respondent's Exhibit No. 7, was received in evidence.)

Mr. Sachse: Now, I have one other.

(The document above-referred to was marked Respondent's Exhibit No. 8 for identification.)

Q. (By Mr. Sachse) Having shown this to the General Counsel and Mr. Ladwig, please tell us what this is and how it is related to your exhibits you have already offered.

A. Well, this is R-8, which is presented primarily to indicate the trend of thinking about where we are going at Winnie. At the time this particular drawing was originally prepared, the normal paraffin separation unit was no more firm than any of the other units on this page. Since that time and since Allied does have control of Winnie, we have moved decisively and have a project in the field now for the production of these normal paraffins.

Q. Now, this chart shows what has been authorized, what is

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awaiting engineering, and what is only under consideration? A. Yes, sir. * * *

VOIR DIRE EXAMINATION

Q. (By Mr. Avedon) "Awaiting engineering," does that mean that project has been approved by the Board of Directors? A. Approved in principle in that to the extent that, yes, we will proceed with the project if our current estimates, which are admittedly preliminary, are firmed up by definitive engineering, we will go ahead.

Q. Has money been appropriated for these projects? A. Has money been appropriated? Only for paraffin.

Q. That is, the plant, the purposes for which the plant will be put at some future date if it is feasible. A. Yes. ***

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CROSS EXAMINATION

Q. (By Mr. Avedon) On this product of range oil, will that be used in the production of petrochemicals? In other words, will that be a feed stock? A. Yes. We made a basic

decision, sir, with regard to this plant. Those who enter into petrochemicals have to face the realities of life, namely, that everything they don't want, they have to put into some fuel product. We selected as that fuel product the most logical one, gasoline. We, therefore, installed this hydrocracker, which prepares for us by removing the sulphur from the range oil and the heating oil, and purifying it, fractions for which we have other purposes that we are not yet ready to discuss. We only use part of those fractions, so what is left we return to that hydrocracker and it destroys it on down to gasoline.

So we basically here have decided that we will concentrate all of our woes in the fuel products business in one thing, a marketable high quality, balanced gasoline that can be sold to major companies.

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Q. Then I take it that range oil gasoline and Diesel oil, as it's produced now, will be used as the basis and further refined into your aromatics, is that correct? A. I balk at the simplification. In principle, it is correct.

Q. All right. Thank you.

Trial Examiner: The entire amount of the range oil?

The Witness: No. This is the thing I mentioned before, sir. There are only parts of it that we will use, and the rest of it we will go ahead and crack on down in this same hydrocracker. It has two reactors. You treat it to prepare petrochemical feed stocks, withdraw them, and you don't want all of them; you take the rest of them and put back in the other reactor, and you make gasoline, and it is a happy chance of life that this hydrochacker not only makes

gasoline but it makes some various aromatic fractions, which is considerable.

Trial Examiner: What you are saying is that you continue to extract as much as you can from the crude or base or range oil, and there is always left a residue which is used for some fuel, for gasoline?

The Witness: That's correct, though our objective is to reduce that quantity of gasoline to zero.

Trial Examiner: Is it possible?

The Witness: No.

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Q. (By Mr. Avedon) On R-5 you show "Revisions and Cooling Tower, \$1,000,000." A. "Offsite Revisions and Cooling Tower, \$1,000,000."

Q. Is that a project off the plant property? A. No. Offsite revisions and cooling tower, this actually represents an accumulation of a great deal of monies that are being spent there on small projects that interrelate between plants. The biggest single item is set out, namely, a new cooling tower. If you happen to be familiar with the location of the Winnie facility, it is proposed to streamline the internal arrangement by removing the existing cooling tower and there will be about four new process units installed in that area that is freed by removing the cooling tower.

Q. One or two more questions. The diagram, the material that you show on R-5 as new additions, I take it the field crew not having moved in, work has not started on that yet, is that correct, on these major revisions, as far as actual major construction? A. No. The heavy con-

struction has not yet started. There has been a great deal of work, you understand, but not heavy construction.

Q. And of this \$6,850,000 that you anticipate spending, how much of that will go to the production of gasoline in its improved status, as you put it?

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A. I suppose that the simplest answer would be to say that some portion of this hydrocracker, the two million dollars, can be ascribed solely to the production of gasoline, that is, we are destroying all of the pieces of No. 2, range oil, heating oil, that we don't want. We are destroying those and making additional gasoline, and so to that extent I think you could say that a portion of that unit is devoted only to the production of gasoline. In addition, there are obviously some attendant changes throughout the plant which will properly be ascribed solely to the production of gasoline. As a guess, I would like to just propose for you that we split the cost of the hydrocracker right down the middle, half for petrochemical uses and half for gasoline production. That gives you—that means one million dollars is being spent for gasoline. As a guess—

Q. If you would give me just an over-all guess, if you will. A. A million and a half of the six.

Q. At least a million and a half of the six would go for gasoline? A. No, sir. Now, I didn't say at least a million and a half, and by this I mean as an engineer I am talking about a million and a half dollars. I don't know the number any better than that. I mean one million and a half of another million. That is as close as

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I can come. * * *

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E. PAUL WILKINSON * * *

DIRECT EXAMINATION

Q. (By Mr. Sachse) You are Mr. E. Paul Wilkinson?

A. That is correct.

Q. And how old are you, sir? A. Forty.

Q. What is your position with Union Texas Petroleum?

A. I am Director of Sales, Petrochemical Section, of Union Texas Petroleum, a Division of Allied Chemical.

Q. How long have you held this position, sir? A. Approximately two years. Not quite. It will be this fall.

Q. Have you spent the two years in actual sale of petrochemicals or what has been the scope of your activities during this two-year period? A. Well, the nature of the business is such that the sales can be divided frequently into many phases or activities. Specifically I have been spending most of my time and

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efforts on market research, market development, guiding ourselves toward the petrochemical complex scheduled for Geismar.

Q. When you say Geismar, how is that related to Baton Rouge? A. Geismar is approximately twenty-three miles south of Baton Rouge on the Mississippi River, east bank.

Q. So when you refer to Geismar you are referring to the same project that Mr. Marshall referred to at Baton Rouge? A. Yes, yes, very definitely.

Q. What experience have you had in the petrochemical field? A. I have been approximately fifteen years with Magnolia Petroleum Company, which was an affiliate of

Mobil Oil Company, in various phases of research, development, marketing, manufacturing, in both oil and petrochemical activities. Prior to coming with Union Texas Petroleum, I left Magnolia to help form the Houston Chemical Corporation. We constructed plants in the Beaumont area to produce certain petrochemicals as well as certain organic chemicals, specifically tetraethyl lead.

Q. Have you actually begun the sale of petrochemicals from the Winnie plant, Mr. Wilkinson? A. When you say have we begun, once again, it depends upon the definition of time. We have secured orders from certain customers and as soon as we are in position to produce this

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material, why, the sale will be consummated. This relates to the high purity normal hexane.

Q. Now, as I understand it, the Winnie plant has had normal hexane, is that right? A. Yes. It depends once again upon the definition. I think part of this was covered in testimony yesterday. There has been normal hexane, in other words, there has been a so-called normal hexane sold.

Q. Now, Mr. Ekholm has made it clear in his testimony yesterday that the Winnie plant does not yet have, but plans to have, equipment to further process this hexane, itself, and that at present it's having it processed through some sort of toll service. A. That is correct.

Q. You heard that testimony? A. That is correct, yes, sir.

Q. Now, what are you doing with this hexane after it has been further processed? A. This hexane, incidentally, we are having this done because, as I mentioned, to get improved purity. This was required by the toll processing. And following the toll processing this material will be

shipped to food extraction manufacturers. The principal use is the extraction of soybean oil.

Q. Now, what have you to say with respect to the purity

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requirements in connection with federal regulations? A. We found on or about January 1 there had been certain changes and change requirements made in the industry. This was precipitated by certain action of the FDA, Federal Drug Administration, concerning purity and carcinogenic contaminants that might be present in food processing materials, normal hexane being one of these.

We found that the facilities available at the Winnie plant were not capable of producing this higher purity material.

We immediately initiated steps from the marketing group to provide ourselves with the facilities through Mr. Ekholm's engineering group, and we then found that there would be a certain time lag. We felt that we would lose our marketing position. So it was because of this, and the purity requirement, that we immediately started negotiating with other producers that would have his equipment, that could produce this specification material, that would permit us to market this normal hexane, and this is what we have done.

Trial Examiner: About how much percentage-wise of the product of Winnie went into this normal hexane product?

The Witness: Mr. Trial Examiner, you mean the total liquid products produced?

Trial Examiner: No, money-wise.

The Witness: We are talking in terms of—we are talking

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in terms of about \$1,500.00 a day, as I recall.

Trial Examiner: Well, can you—

The Witness: Gross realization.

Trial Examiner: Can you relate it in terms of proportion or percentage, either expressed in dollars or output to show just how much of the overall output of the Winnie plant went into this hexane or the normal hexane product?

The Witness: If I understand your question, you would like for me to relate the production of normal hexane percentage-wise to the other products produced, is this the question, sir?

Trial Examiner: Yes. Well, very briefly, I just wanted to clarify the point, whether there is a substantial part of the production of Winnie or whether it's minimal, or whether it's very important or of lesser importance.

The Witness: Currently, sir, this is, I would say, in the order of magnitude of maybe twelve per cent. This does not mean that it cannot be increased because of the natural components of the precursors present in the stream. But let's say presently it's in the order of magnitude of about twelve per cent.

Trial Examiner: Twelve per cent?

The Witness: Yes, sir.

Trial Examiner: That would be in terms of revenue, sales?

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The Witness: This would be gross realization, sales, dollars and cents value, yes, sir.

Q. (By Mr. Sachse) What would the other eighty-eight per cent of Winnie's production be? A. The other eighty-eight would be energy products. This would exclude the natural gas.

Q. Yes. Excluding the natural gas— A. Excluding the natural gas, this would be the other energy products, the gasolines, the fuel oils, the range oils, et cetera.

Q. Now, what is your projection for sales in terms of dollars as of February 1, 1964, when the immediate conversion program will have been completed? Now, I don't mean the number of dollars, but percentage-wise what part of your revenue do you anticipate will come from the sale of fuel products and what part from the sale of petrochemical products? A. This will be total petrochemicals and not limited to hexane, is that right?

Q. That's right. Total petrochemicals. A. Our target and our objective in this area would be to reduce the ratio, or for all intents and purposes to get a reciprocal of that ratio of approximately thirty-three per cent.

Q. Thirty-three per cent?

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A. Would be for energy products, and sixty-six, sixty-five per cent, would be for petrochemicals.

Q. That leaves about two per cent—sixty-three, I mean sixty-five and thirty-three.

Trial Examiner: I think he has indicated about one-third as against two-thirds, is that about it?

The Witness: Essentially that. There may be some specialty solvents, sir, that may not qualify either way.

Q. (By Mr. Sachse) Now, you have started, according to Mr. Ekholm, to add substantial equipment for the production of normal paraffin? A. Yes, sir.

Q. Have you taken that into consideration in the figures you have just given? A. The normal paraffins, depending once again on the market development, this is a whole new area of petrochemicals, we certainly hope that if the market continues to develop as we anticipate, that the sixty-six per cent figure will increase even further. * * *

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Mr. Sachse: Well, I knew, and you knew, we all knew, that Mr. Ekholm had said normal paraffin was to be produced, and I wondered whether the sixty-seven per cent included the normal paraffins or was calculated before the addition of the normal paraffins, and Mr. Wilkinson has said it was calculated before the addition of the normal paraffins.

Trial Examiner: I will accept that.

Mr. Sachse: That is all there is on that.

Q. (By Mr. Sachse) Mr. Wilkinson, will we, Allied Chemical, have for its customers from the Winnie plant the same kind of customers that Texas Gas had during its operations?

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A. As relates to—

Q. As relates to your petrochemical industry. A. No, we will not have.

Q. Well, will there be a substantial change or just a minor change? A. Let's, if I may use the—we were on the normal hexane classification in marketing. In this particular field alone, we currently have, as I recall, approximately eleven accounts total. Of these eleven accounts, six are new customers that, as I understand from Texas Gas marketing personnel, they were not able to secure this business until such time as the purity correction had been effected.

Q. Now, Mr. Wilkinson, who is Mr. Herrington? A. Mr. Herrington is the traffic clerk with total responsibility to the petrochemical sales section of Union Texas Petroleum, effective January 1, 1963.

Q. Did he at any time after January 1, 1963, have any authority or any function in connection with the production activities of the Winnie plant? A. Absolutely not.
* * *

CROSS EXAMINATION * * *

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Now, the energy products that are sold at the present time, they are being sold to gasoline stations and dealers of that nature, aren't they? A. A technicality, not directly to, they may go through other distributors, but this is the end use. * * *

Q. Now, at the present time are you selling any petrochemicals out of Winnie that, directly, in other words, when I say that, I mean that do not require further processing by other sources, as you have indicated? A. We are not currently selling products out of Winnie that

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do not now require further processing, but we are negoti-

ating for the sale of other products.

Q. This will be some time in the future when your improvements and your new processes are installed and are on stream? A. This is correct, sir.

Q. Mr. Herrington's job is what? A. Traffic clerk, I think, would be an apt description. He directs the traffic sale of material from the Winnie plant.

Q. And who does he give his instructions to? A. Well, to whomever it might be necessary in order to effect the transportation of the movement of product out of the plant.

Q. In other words, he sees that the product goes to the right location and on the right time and to the right customer in the right quantities? A. This is true, sir.

REDIRECT EXAMINATION

Q. (By Mr. Sachse) Will other divisions of Allied Chemical Corporation use the petrochemical products which will be produced at Winnie this year? * * *

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Q. (By Mr. Sachse) No, no, I don't mean that. I mean when you get your new equipment into use, the equipment that is planned, as discussed by Mr. Ekholm yesterday, when this is on stream, as Mr. Avedon commented a moment ago, will all of these products be sold to other companies or will some of these products be acquired by other divisions of Allied Chemical Corporation? A. Some of these products will be utilized by other divisions of Allied Chemical and some of the products will also be sold to the merchant market, as referred to in the trade.
* * *

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REDIRECT EXAMINATION

Q. (By Mr. Saches) Allied Chemical Corporation is already producing synthetics and plastics and detergents, is that true? A. That is correct, sir.

Q. And petrochemicals, to be produced at Winnie, will be useful for that purpose, is that right?

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A. That is correct, sir. * * *

Trial Examiner: I have just one question.

EXAMINATION

Q. (By Trial Examiner) The production this year of petrochemicals, which will go to other divisions of Allied, will be accomplished as a result of a completion, at least in part, of the conversion project for Winnie? A. Yes, sir.

Q. Could you spell that out percentage-wise, about how much— A. Of the total—

Q. How much will be produced this year in proportion to the total output of Winnie that will go to other divisions of Allied? A. I would estimate the volume to Allied would be probably fifty per cent.

Q. This year? A. Yes, sir.

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Q. Calendar year 1963? A. Yes, sir.

Q. Of petrochemical products? A. Yes, sir. I would say at least that.

Q. Even though no petrochemical products are being

produced as of now, if my statement is correct? I gathered that from other evidence. A. This is true in a strict definition, yes, sir.

Q. Then by the end of this calendar year fifty per cent of the output of Winnie, at least fifty per cent, will be in petrochemicals? A. No, sir. You asked me of the petrochemicals produced what percentage would go to Allied, as I understood your question.

Q. No. This question was intended to mean what percentage of the overall output of Winnie, the energy products and the petrochemical products— A. I see.

Q. —by the end of this calendar year will go to other divisions of Allied, that is, the petrochemicals? A. Yes, sir. Coincidentally the figures don't change. We believe it will be in the order of sixty-six per cent of the total products produced will be petrochemicals, and the majority of these will go to Allied divisions, which would be the fifty per cent or better.

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Q. It would be fifty per cent of the projected sixty-six per cent— A. That is correct, sir.

Q. —of the total output— A. That is correct.

Q. —which will go to other divisions of Allied? A. That is correct.

Q. By the end of the calendar year 1963? A. Yes, sir.

Q. When do you expect to start shipping these petrochemicals? A. Well, we will start on the benzene, by virtue of the toll processing, sometime within the next thirty days, but this, as Mr. Ekholm testified yesterday, these facilities will be on stream at Winnie in the later part of this year, and certainly the normal paraffin unit will have been completed and on stream and this will be sold to Allied.

Q. Well, now, we get into toll processing. I am talking in terms of the product as it emerges from Winnie, without any additives or any further processing away from the Winnie plant. A. The schedule as contemplated and discussed in testimony that was given yesterday for the scheduling, what I have said will be true, sir.

Q. Within thirty days you will start shipping petrochemicals to other divisions of Allied, perhaps elsewhere, final product

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of Winnie? A. No, sir, I was referring in that area to the toll processing material. It will be in the last quarter of this year before these materials will be shipped. We have a technicality here, sir, between the toll processing and whether the final specification material is produced at Winnie or whether we are able to do this by virtue of using other people's equipment to do this. * * *

Q. Part of the plans ultimately, as I understand the testimony, is to bring in the facilities to Winnie to perform this further processing— A. That is correct.

Q. —of the hexane? A. Yes, sir.

Q. So that toll processing will no longer be necessary? A. That is correct, sir.

Q. Now, I am talking in terms of the projected plans for Winnie. A. Yes, sir.

Q. At Winnie, when a final product comes out of Winnie, when do you expect to start shipping petrochemicals as a final product of Winnie?

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A. This will start in the fall, sir, when these units have been completed.

Q. That will be the last quarter, as you say? A. Yes, sir.

Q. And at present there is no production of petrochemicals? A. As we have defined it, that is correct, sir. * * *

JOHN BIEGEL * * *

DIRECT EXAMINATION

Q. (By Mr. Sachse) Mr. Biegel, what is your full name, please, sir? A. John Biegel, B-i-e-g-e-l.

Q. By whom are you employed? A. Fluor Maintenance, Incorporated.

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Q. In what capacity? A. I am area sales manager.

Q. How long have you been with Fluor? A. Eight years.

Q. When you say area sales manager, you mean in the Houston area or what territory does it cover? A. The territory it covers is approximately the middle third of the United States.

Q. Does your company have a contract for maintenance of the Winnie plant with Allied Chemical Corporation? A. Yes, we do. * * *

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(The document above-referred to, heretofore marked Respondent's Exhibit No. 9, was received in evidence.) * * *

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(The document above-referred to was marked Respondent's Exhibit No. 10 for identification.) * * *

Q. (By Mr. Sachse) I have marked a copy of a letter R-10 and I have shown it to General Counsel, and I show it to you now, and direct your attention to the fact that it shows that a carbon copy was sent to you. What is the date of that letter? A. February 6, 1963. * * *

Q. (By Mr. Sachse) Now, sir, I note that Paragraph 3 of the numbered subparagraphs of that letter refers to a mutually satisfactory basis for obtaining the necessary labor required to staff the job will be developed by you as one of the conditions of the contract. Did you meet that condition? A. Yes, we did.

Q. As I understand it, there is a so-called right to work act in Texas, is that correct? A. Yes, sir.

Q. Do you have an agreement with any craft unions relative to referrals of employees? A. Yes, sir, we have national agreements with the journeymen we expect to be required to furnish for this job, with the AFL-CIO, to furnish the people. We use the hiring hall procedure. And we—well, that is our agreement that we have.

Q. Is this what is known as the president's committee? A. It's known as the President's Committee for Maintenance by Contract, yes, sir. * * *

Q. (My Mr. Sachse) Well, then, let me ask this question, which will be factual: Generally speaking, does your company use union men or non-union men? A. The large majority of our employees are obtained through the hiring halls, through the union hiring halls, a very large majority of them, yes, sir.

Trial Examiner: Now, is that pursuant to a contract in which these unions are recognized as majority representatives?

Do you understand the question? Or do you just use the hiring halls as an employment agency?

The Witness: Our agreement with the national unions is to furnish men as we require them to carry out the assignments that Union Texas give to us for work in the plant.

Trial Examiner: Is it an exclusive hiring hall agreement, that you will use these hiring halls exclusively for the employment of your help?

The Witness: We find the hiring hall procedure adds to our efficiency. I do not believe it is an exclusive

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agreement. We attempt to comply with the statutes in the State of Texas regarding hiring. * * *

You have the Fluor contract, collective bargaining contract, marked for identification? * * *

(The document above-referred to, heretofore marked Respondent's Exhibit No. 11, was received in evidence.)

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Q. Do you have any delivery records showing when equipment was delivered to the Winnie plant? A. Yes, sir, I am sure we do. I do have them in my files. I have a record of sorts of this crane delivery. * * *

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A. From my notes I have reason to believe that the crane was on the job site at Winnie on February 18, 1962. * * *

CROSS EXAMINATION * * *

Q. You don't know, you didn't receive—your notes wouldn't show— A. No, sir.

Q. —when they started, when your people started work
 at

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that plant pursuant to this contract? A. No, sir. I negotiated the contract. I am not the administrator of it. Once the contract was negotiated and the terms were agreed to, a man who is called a director of field operations, who is headquartered in Los Angeles, takes charge, and unless something goes haywire, I don't—I am not concerned with the details of the administration of the contract.

Q. You don't know when Fluor started actually working on the job, is that correct? A. I don't know, sir.

Q. Do you know the actual work that they started doing once they started doing the work? A. I do not know, sir.

Q. You do not know that. Let me ask you this, does Fluor have any contract with the Oil, Chemical and Atomic Workers Union, in Winnie? A. No, sir.

Q. Does Fluor utilize any employees hired from or through the OCAW in Winnie? A. I am not qualified to answer that positively. I don't believe we do.

Q. Now, I take it on this contract of February 20, since apparently the telegram was received February 21 of 1963, would you tell me how that contract was signed, effective

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February 20, when the approval hadn't been given until the 21st? A. Yes. I believe we had been told orally or given telegrams from each of the presidents of the crafts we expect to employ here that they would sign the standard President's Agreement, which this maintenance contract has come to be known as. We relayed that information to the officials of Union Texas, and the contract was signed based on these oral and telegraphic assurances. * * *

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EXAMINATION

Q. (By Trial Examiner) This letter of February 6 from Union Texas to Fluor, in evidence as Respondent's Exhibit 10, the third paragraph, "A mutually satisfactory basis," by

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mutually satisfactory, does that mean satisfactory to Union Texas? A. Yes, sir, and to Fluor Maintenance.

Q. Can you explain that further, what was intended by that phrase, "mutually satisfactory"? * * *

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We had made these representations orally that we could furnish the labor on a satisfactory basis. Now, they wanted to see something a little more concrete than our conversation. They wanted to see a telegram or have us tell them that we had orally gotten a promise from the president of each one of these crafts to furnish the skills that we would

need on this job. And I believe the telegram here does give them a mutually satisfactory basis that we were talking about. * * *

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Trial Examiner: And this is within your particular knowledge, Mr. Biegel, that what was contemplated by this phrase, "mutually satisfactory," was something or was this type of document which is Respondent's Exhibit 12?

The Witness: Yes, sir. * * *

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REDIRECT EXAMINATION

Q. (By Mr. Sachse) I believe you have made it clear by some of your answers on cross examination, but I think we ought to be certain about this thing. Is this maintenance contract with Allied Chemical, Union Texas, the only such contract you have, or is this something that your company customarily does? A. We have a total of six of these contracts, sir, in the United States.

Q. Was our contract the first? A. Yours was the sixth.

Q. And you regularly perform this maintenance work pursuant to these contracts, such as you are doing at the Winnie plant, is that right? A. Yes, sir. * * *

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EARL D. ELLIOTT * * *

Q. (By Mr. Sachse) Will you please state your full name, sir? A. Earl D. Elliott.

Q. Are you the Mr. Elliott who has been referred to in this testimony as the General Counsel and Secretary of Texas Gas Corporation, Texas Gas Company? A. That is my position. I haven't heard any of the other testimony.

Q. Are you here in response to a subpoena? A. Yes, I am.

Q. Did you have any part in the negotiations of the purchase agreement by which Texas Gas agreed to sell and Union Texas agreed to buy under the conditions specified properties which included the Winnie plant? Did you have anything to do with the negotiations? A. Yes, I did. I worked on that contract for quite some time.

Q. Did you have anything to do with the negotiations for the operating agreement that is dated December 28 between the same companies?

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A. Yes, I did.

Q. Would you please tell the Trial Examiner how this agreement of December 28 was arrived at? A. Yes. I do not recall the specific date, but it was sometime in December of 1962, Mr. Carl Gladden, my boss, and Executive Vice-President of Texas Gas Corporation, gave me a draft of what was termed Operating Agreement, I believe, and asked me to evaluate it and give him my opinion of this agreement, what parts of it were good, bad and indifferent, from a legal standpoint. That it was being contemplated that an agreement of this type would be entered into. * * *

The agreement was—I recall that on the 21st, which was a Friday, was one of my last discussions with Mr. Pierce, at which time we had not reached any agreement with regard

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to the thing. I still had some objections and some changes I was proposing, and some of these were later negotiated out and incorporated into the agreement. But this is the way it came into being.

Trial Examiner: About when were you handed this draft by Mr. Gladden?

The Witness: I would estimate, I can't say precisely, I may have some notation on it, though I don't recall, I would say it was the first or second week of December, probably the latter part of the first week of December. Somewhere in that general area. * * *

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Q. Was this agreement approved by the Board of Directors of Texas Gas Corporation? A. Yes, it was approved on the—we had a board meeting the morning of December 31, and this was one of the matters that had to be approved by our board. * * *

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Q. (By Mr. Sachse) When was the operating agreement with Union Texas approved by the Board of Directors of Texas Gas Corporation? A. It was approved at a board meeting on December 31, 1962. * * *

Q. (By Mr. Sachse) Now, sir, prior to the time this agreement was made, had you held a meeting, or had you attended a meeting, with the union committee of OCAW, Local No. 4-243? * * *

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A. Yes, I did attend such a meeting.

Q. (By Mr. Sachse) Will you say when that meeting was? A. On December 22, a Saturday, I believe, 1962.

Q. Did you tell the union then whether or not—

Mr. Avedon: I am going to object to the question just asked. What he told the union, please.

Q. (By Mr. Sachse) All right. What did you tell the union, then? That suits me. A. At that time a meeting was arranged with the International Representative and the Workmen's Committee of OCAW, as well as with representatives of our other two unions, being the Pipefitters and the IBEW. I advised them that, all of them as a group, that Texas Gas Corporation had entered into a purchase-sale agreement with Allied Chemical, New York, on the 5th of December, and that this agreement provided that we were selling certain of our assets to Allied Chemical Corporation. Included among those assets were the facilities at Winnie, Texas. I further advised them that we were in the process of negotiating an operating agreement whereby Texas Gas would be a contractor, and that we would operate the plant for Allied. I further advised them that in the event that this agreement was consummated, though at the time it was not

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completely consummated, that it was our intention and our desire to perform this service of operating the plant for some period of time. We didn't know what that would be. But that we would agree to abide by all the contractual obligations of our collective bargaining agreements with

the three unions represented at this meeting, including OCAW, Local 4-243. I further told them that I would advise them as soon as practical with regard to when and if this operating agreement was agreed upon in a final state between the parties. I further said that in the event this sale was completed, because the title certainly had not passed, and there was no certainty that it would, though it was fairly imminent from all appearances, that I would negotiate with all three of the unions with regard to matters of severance pay, termination, questions on accrued vacation, final pay, all of these matters which would naturally, with this many employees, there would be a number of questions, and that at the proper time I would be glad to negotiate with them with regard to these items.

Q. Who besides you, sir, was at this meeting for Texas Gas? A. Mr. Gladden, our Executive Vice-President, Mr. Tom Neville, our General Superintendent, Mr. Charles Albritton, the Plant Superintendent, Mr. Jesse Cating, our Personnel and

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Safety Director, and Mr. Karl Mueller.

Q. Mr. Elliott, after the operating agreement was completed, did you ever have occasion to inform Mr. Neville, Mr. Tom Neville, of the fact that it had been completed? A. Yes, very definitely, because it was becoming clearer and clearer from day to day that the sale was probably going to actually be consummated on the 31st of December. In the event the plant would be shut down on the 31st of December, we had preparations to make to turn the plant over to Allied in whatever form they wanted it, whether it be operating, shut down or what have you, because it would no longer be our property, and our em-

ployees would no longer have any control over it, and as soon as it was signed and agreed upon, I talked to Mr. Neville about the fact that we were going to operate for a period of time, that the contract provided, I think, for three months as an outside, but that there were cancellation rights by both parties. I also talked to Mr. Neville about the contract the day of the meeting, the 22nd, at which time I explained the general idea of the contract to the, the operating contract, to the unions.

Q. Do you know whether or not after the contract was signed, you showed it to Mr. Neville? A. We had several meetings in early January, at which time we discussed the contract with the union. Mr. Neville was

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present at all of those meetings and in making reference to it, I had it there, I don't think I can say unequivocally that he, at this time, went through it completely, but it was available to him, and he was aware of its detailed operation, he had to be, he was our chief representative at the Winnie plant.

Mr. Avedon: I am going to object to that answer. He said he was aware of what it contained. The question was—it's a non-responsive question. The question is "Did you ever show him the contract?" And I think the answer to that is "No." And I move to strike the rest of it as being non-responsive.

Trial Examiner: Well, I will grant a motion to strike that Mr. Neville was aware of its details, that part of the answer, without showing the basis for his knowledge of Mr. Neville's awareness.

Q. (By Mr. Sachse) Well, then, let me ask you this:

Did you discuss the terms of the contract with Mr. Neville after the contract was actually written and signed and in being? A. Yes.

Trial Examiner: Did you have the contract before you at the time you discussed it?

The Witness: Yes.

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Trial Examiner: Was he looking at it?

The Witness: I think I am somewhat confused with regard to the specificity of the question that we are talking about. He physically saw the contract. We were sitting side by side. As to reading the detailed wording, I can't say that he did. He certainly saw the contract, if that is the question. As far as examining it in detail, I am not aware of whether he did or not.

Trial Examiner: Well, have you discussed technical terms of the contract? Didn't you have the contract before you to read?

The Witness: Yes, I did, and I certainly went through it. Mr. Neville's position as General Superintendent caused him to, of course, be dealing with all of our employees down there on a day-to-day basis. I was the person to whom he brought all the problems with regard to that since the negotiation of labor contracts were my responsibility.

Trial Examiner: Do you know if he had a copy of a contract, of this operating contract?

The Witness: I do not of my own knowledge know that he did have one.

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To what extent did you discuss the contract, review the contract with Mr. Neville?

The Witness: I went through the contract with Mr. Neville in great detail, explaining to him our position with regard to it, where we stood with regard to our employees, in very, very close detail, that we were to continue to deal with our employees on the same basis that we had in the past

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with regard to all procedures of their collective bargaining agreements, grievances, and that sort of thing.

I did not explain to Mr. Neville the fee sections of the contract because this is not the sort of thing that is discussed with these particular employees. This was not a necessary thing for him to be knowledgeable about in the operation of the plant.

I didn't discuss with him in detail the insurance sections of the contract, which provided the type of insurance that would be carried by the contractor, and that sort of thing, but I did go into great detail with him with regard to all aspects of the contract which related to the operation of the plant and the effect of this plant on that operation.

Q. (By Mr. Sachse) Can you say with any certainty when this was? A. I believe this was at his office approximately the 3rd or 4th of January. * * *

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Q. (By Mr. Sachse) At the meeting of December 22, 1962, with the representatives of the union, to which you have already referred, was there any suggestion about modification of the agreement between Texas Gas and OCAW? A. Yes. At that meeting Mr. Cowart handed me a typed page of paper with a short paragraph typed on it, which related to amending the then effective collective bargaining agreement to include a successors and assigns clause.

Q. Do you have that? A. Yes.

Q. Will you let me see it, please?

(A document was handed to Mr. Sachse.)

Trial Examiner: Who is Mr. Cowart?

The Witness: Mr. Cowart is the International Representative of OCAW, the person with whom I have dealt for a number of years in negotiating contracts and adjusting grievances with the Local 4-243 of that union.

Q. (By Mr. Sachse) Now, is this the paper to which you refer, the paper which I mark R-13, which I have shown to General Counsel?

(The document above-referred to was marked Respondent's Exhibit No. 13 for identification.)

Q. (By Mr. Sachse) There are two others attached to it. I refer only to the one marked R-13.

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A. Yes, this is the one. The written notation in ink on it is in my handwriting, and was noted at the time it was given to me at the meeting.

Q. Did you agree to this requested modification? A. No, did not. * * *

(The document above-referred to, heretofore marked Respondent's Exhibit No. 13, was received in evidence.)
* * *

Trial Examiner: On the record.

Q. (By Mr. Sachse) After the sale was completed on December 31, 1962, was there any subsequent meetings with OCAW? A. Yes, there were several.

Q. When was the first one? A. The first one was on January 3, 1963.

Q. What was the purpose of that meeting? A. The purpose of the meeting was to advise the OCAW

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representatives, as well as the Pipefitter and Electrician representatives, that the sale had taken place on December 31, that title had passed to Allied Chemical Corporation, and that the operating agreement, which I had made reference to on the December 22 meeting, had been finalized and was in effect, and that we would be operating the facility for an unknown period of time, but a maximum of, under the terms of the contract, of three months.

Q. Did you have any further meeting with OCAW? A. Yes, I had a meeting with—well, I had several more. I had one on—

Q. When was the next— A. —on January 10. I had one on—

Q. What was the purpose of that meeting? A. The January 10th meeting, we had several grievances in the initial stage that were filed late in December, and at one of the prior meetings, the January 3rd meeting, we had

waived the time limitations and put there in abeyance because we were busy with other things, and so that the time limits would not keep the employee from going forward with the grievance, and the meeting of the 10th of January principally was convened for the purpose of discussing these grievances which had been filed by the employees. They—I don't specifically recall who filed them. They related to meal tickets.

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The union was requesting that if a man was called out before his regular scheduled shift, that he be entitled to a meal ticket within a certain number of hours.

The contract, at that time, or the contract provided that it was after working a certain number of hours beyond his regular scheduled hours.

They wanted to adjust this to be in agreement with the other two labor contracts in the plant.

Trial Examiner: I don't think you need to go into the substance of the grievances.

Mr. Sachse: No, I don't wish to do that.

Q. (By Mr. Sachse) The collective bargaining agreement, which is already in evidence, shows that by its terms it was to expire in March of '63, but in the event of notice to that effect, and it was also subject to being opened for negotiations. And I would like to know whether or not the union requested reopening or negotiations about the contract? A. Yes. Mr. Cowart gave me verbal notice at the 22nd meeting that he wanted to talk about the wage question.

OCAW was entitled to open this contract once during its term upon a condition precedent that three major companies in the area had opened for negotiations on wages.

The five per cent pattern was being discussed at that time, and we were watching it, both Mr. Cowart and I, as to what the pattern was going to be, and to discuss it and

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negotiate on it. He then gave me a written notice.

Q. Do you have it with you? A. I brought it in these things that were subpoenaed.

Q. In our subpoena duces tecum? A. Yes, sir.

Trial Examiner: There was an oral request from the union at the December 22 meeting, you say?

The Witness: Yes.

Q. (By Mr. Sachse) I show you two letters, which I have shown to General Counsel, and which I mark R-14 and R-15, one dated January 10, the other January 11, and ask you if these are the letters from OCAW requesting negotiation, to which you referred? A. Yes, these are the letters.

Mr. Sachse: In connection with the witness' testimony, I offer, produce and file the letters which he has identified, and which have been marked, and there is an envelope attached to R-15.

Trial Examiner: You can make that R-15-A and B.

Mr. Sachse: All right. We will make the envelope R-15-A and the letter R-15-B.

(The documents above-referred to were marked Respondent's Exhibits Nos. 14 and 15-A and 15-B for identification.)

Trial Examiner: Any objection?

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(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 14 and 15-A and 15-B were received in evidence.)

Q. (By Mr. Sachse) Do you know whether or not you made a written response to those letters? A. I don't recall specifically that I did. We had another matter under discussion at that same time, and I had written Mr. Cowart with regard to it. Whether I made reference to his letters of the 10th and 11th of January, referring to the opening of the contract, or the termination of same, if agreement wasn't reached, I do not specifically recall.

Q. Was any discussion at the meeting of January 10th had about the rackmen at the Winnie plant? A. Yes.

Q. What was it? A. This was one of the grievances, I think it was filed by R. O. Mitchell, that related to whom the rackmen were to be responsible. The job duties prescribed that they would be responsible to the rack foreman. We did not have a rack foreman at this time, and the

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complaint had been made that Mr. Frazier, our lab superintendent or our laboratory foreman, had been giving some instructions to the rackmen, and that they felt this was improper, that they should have only one person to take their instructions from.

We assured them that we would take care of that matter, that we agreed with them, and from that point forward their instructions would come from the shift fore-

man, and Mr. Frazier would have to route his changes and requests through the shift foreman.

Q. Was there any discussion concerning Mr. Herrington in that meeting? A. No.

Q. Who is Mr. D. F. Fischer? A. Mr. D. F. Fischer was a long-time employce of Texas Gas Corporation, worked in our Winnie plant.

Q. Was he still working at the Winnie plant at February 14, 1963? A. No. Mr. Fischer operated or does operate some farm properties or ranch properties, which he was anxious to devote his full time to, and requested of Mr. Neville that he be allowed to leave early. He felt that once the properties were taken over by the new owner that, and we terminated our employees, that he didn't want to wait for his severance pay, he wanted to

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terminate early and still get the benefits of the severance pay and the other things that go with normal lay-off.
* * *

Mr. Sachse: I am going to show, sir, by this and a number of other things, that throughout this entire period of January 1 through February 14, and thereafter, that OCAW and all of the men who are listed in the Complaint thoroughly understood that they were working for Texas Gas Corporation, which was operating this plant as an independent contractor, and that they dealt with Texas Gas Corporation on that basis

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in many particulars, including this one, and I think we are entitled to show that in the record. This is an issue that has been made in this case. * * *

A. It was discussed at either the January 3rd or January 10th meeting. I believe it was the 10th, January 10th. We were talking about boiling the thing down to an agreement. We didn't want to get into the position of having every employee come in with such a request. We wanted the union to agree with us on it and understand that we would have to take each individual case as it came up. * * *

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(The document above-referred to, heretofore marked Respondent's Exhibit No. 16, was received in evidence.)

Q. (By Mr. Sachse) Do you know whether or not Mr. Gladden received a letter from Mr. H. G. Teverbaugh, dated December 31, 1962, concerning the operating agreement or contractor's agreement of December 28, 1962?

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A. Yes, sir. * * *

(The document above-referred to, heretofore marked Respondent's Exhibit No. 17, was received in evidence.)

Q. (By Mr. Sachse) Did you reply to that letter? A. Mr. Gladden—I assisted Mr. Gladden in drafting a reply to the letter, yes.

Q. I show you a document marked R-18, dated January 31, 1963, which has been exhibited to General Counsel and ask you if that is the reply to Mr. Teverbaugh's letter?

Trial Examiner: Is this dated December 31, 1962, did you say?

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Mr. Sachse: Did I?

This is dated January 31, 1963.

Trial Examiner: January 31.

Mr. Sachse: January 31, 1963.

A. Yes, sir, this is a copy of the letter.

Mr. Sachse: In connection with the witness' testimony I offer, produce and file the letter, which the witness has identified, and which has been marked R-18.

Mr. Avedon: No objection.

Trial Examiner: Respondent's Exhibit 18 is admitted.

(The document above-referred to, heretofore marked Respondent's Exhibit No. 18, was received in evidence.)

Q. (By Mr. Sachse) Now, returning to the matter of your transactions with union, was the proposed wage increase discussed again after January 16, 1963? A. Yes, it was discussed—let's see, we had a meeting on the 3rd of January, one on the 10th, we had one on the 7th of February. I am not certain without referring back to my records whether or not we had one between the 10th of January and the 7th of December, I mean the 7th of February, but at all of these meetings that I have mentioned, we did discuss the five per cent wage increase proposal by OCAW. The proposal had also been made by the other two unions, Pipefitters and Electricians.

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Q. Was it ever agreed upon? A. No, it was not. We

made an alternative proposal that was not accepted, and the five per cent demand was renewed.

Q. Now, when did you know that Union Texas had elected to terminate the operating agreement with Texas Gas Corporation? A. I knew about 8:25 on the morning, 8:25 to 8:30, somewhere in that area, on the morning of February 14, 1963.

Trial Examiner: Was that your first knowledge?

The Witness: Yes.

Q. (By Mr. Sachse) How did you learn of it? A. When I arrived at my office that morning, I was ten or fifteen minutes late on that particular day, and my secretary advised me that Mr. Gladden wished to see me in his office immediately. I dropped my briefcase and went down there. At that time Mr. Pierce and Mr. Beman, I believe, were in Mr. Gladden's office, and he handed me the letter which evidenced the election of Union Texas to terminate the operating agreement, and as I said, it had just been handed to me, and he wanted me to look at it, and we had to decide the things which we must do at that time.

Q. Were you given any instructions as to what you should do? A. Yes, I advised Mr. Gladden that I would try to immediately

make contact with the representatives of all three unions and give them as much notice as I had, and proceed to—then Mr. Gladden said he thought I should go to the plant and be sure everything was in good order and make an effort to set up some place at which I could deal with the individuals on their insurance conversion rights, on their retirement plan rights, their savings plan rights, a place to

pay out final pay checks, severance pay and that sort of thing.

I followed these instructions and proceeded to the plant, arriving there about 1:00 o'clock.

Trial Examiner: What is Mr. Beman's job?

The Witness: Mr. Beman is—

Mr. Flowers: Vice-President in charge of Petrochemicals.

Q. (By Mr. Sachse) What part did you take, if any, in the shutdown of the plant and the termination of the services of Texas Gas Corporation employees on this date?

A. Well, I contacted eventually the various union representatives, and told, gave them the official word, which I had promised I would give, that the operating agreement had been terminated, that the option of Union Texas had been exercised, and that I was in Beaumont and would be in Beaumont for several weeks available to discuss and negotiate any items properly that should come before us.

I had occasion to see a number of the employees in

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Beaumont. When I got there I took a room at one of the motels where we normally hold our meetings, and several of them came there to ask me questions and discuss the situation with me. Those that came, I advised them that it was—that the agreement had been terminated, and that we had subsequently terminated all of our employees.

Trial Examiner: You were merely giving them information, you weren't giving them the official termination notice?

The Witness: I felt that I had fulfilled my obligation in this respect, sir, by giving it to the International Representative.

Our earlier agreement was that I would call them at my first opportunity when I did have notice. I presumed that they, that the men were in touch with these other people.

Trial Examiner: Yes, but, I mean, you did not assume the function of systematically advising each of the employees or their supervisors?

The Witness: No, I did not.

Q. (By Mr. Sachse) Did you meet with the union representatives on February 18, 1963? A. Yes, sir, I did.

Q. For what purpose? A. During the several preceding days to that date, some of the men who had come to my makeshift office there, had voiced

the desire that they be paid some additional amount of money along with severance due to the fact that they were given no notice of their termination. Though I talked about it in general terms with these employees, I advised them that to do something of this nature we would have to meet with Mr. Cowart and discuss it. On the 18th I met in the afternoon with the Electricians and the Pipefitters and their representatives to discuss additional money, and then that evening met with the OCAW, Mr. Cowart, Mr. Mitchell, Mr. Stengler, Mr. Lindsey and Mr. Miles, I believe. There may have been others present, I am not certain. We discussed additional money and talked about it and I advised them at that time that we had a severance

pay plan in the contract which normally took care of that sort of thing. I agreed with them wholeheartedly that I thought the notice was unduly short, and I had discussed it with Mr. Gladden by telephone, and that he and I were of the position that we would recommend that we would offer them one week's extra pay per man in lieu of notice, as a counter to their demand for extra pay, they wanted more. We told them that it was something that would be extraordinary, and it would have to be approved by our Board of Directors, and that they were meeting on the 22nd

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of February. That I would be in Houston for that board meeting, and that we would make the recommendation.

And they agreed at that time to accept this one week's pay in lieu of notice upon the approval or if approved by our Board of Directors, and it was subsequently approved and paid. * * *

(The document above-referred to, heretofore marked Respondent's Exhibit No. 19, was received in evidence.) * * *

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(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 20 and 21, were received in evidence.) * * *

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(The document above-referred to, heretofore marked Respondent's Exhibit No. 22, was received in evidence.) * * *

Q. (By Mr. Sachse) With respect to Exhibit R-22, the salutation is, and I quote, "Gentlemen," but I understood from your testimony that it was actually addressed to each of the former employees of Texas Gas Corporation, is that correct or not? A. That is correct.* * *

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CROSS EXAMINATION

Q. (By Mr. Ladwig) How many representatives of Allied Chemical Corporation or Union Texas Petroleum Division did you talk with in discussing the operating agreement before it was signed in December, 1962?

Trial Examiner: Do you have the question?

The Witness: Yes.

Three or four, the best my memory would serve. I don't know. There may have been others.

Q. (By Mr. Ladwig) Who did you talk to? A. I talked to Mr. Pierce. I talked to Mr. Beman. I think I talked on one occasion to Mr. Flowers. I am not sure about that.* * *

Q. Isn't it a fact that they indicated that they weren't

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ready to start operating the plant on January 1st? A. Yes, they did indicate that.* * *

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Trial Examiner: I think you testified that you started negotiating for the operating agreement about the last week

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in December.

The Witness: That's right, it was shortly after I came back from New York, after the execution of the purchase agreement.

Trial Examiner: And the execution of the purchase agreement was—

The Witness: December 5, I believe.

Trial Examiner: Yes, sir.

Trial Examiner: Within a few days, within a day or two?

The Witness: I don't remember specifically, but certainly within the next week, I think.

Trial Examiner: But the subject did not come up during the negotiations for the purchase agreement?

The Witness: No, not at all, at any time. In fact, it was quite a surprise to me, at all, that this may be in prospect.

Trial Examiner: But the negotiations did start very soon afterwards?

The Witness: Yes, sir.

Q. (By Mr. Ladwig) Let me see, I may have already asked this, but I want to make it clear: Who, representing Allied Chemical Corporation, or Union Texas Petroleum, stated that the purchaser was not ready to operate the plant on January 1?

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A. Nobody stated this to me, Mr. Ladwig. Perhaps someone did to Mr. Gladden because we then were

negotiating the details and the refinements of the draft that had been submitted on the operating agreement. It was just—it came to me in the form of "Here is a draft, tell me what we want to do with it, from a legal standpoint." But nobody from Union Texas or Allied Chemical talked with me about this at that time.

* * *

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Trial Examiner: This was in a conversation in early January?

Mr. Ladwig: In early January.

Q. (By Mr. Ladwig) Of this year? A. That's correct. May I restate, please, your question. You were saying that, you were asking me whether or not I said to you that Union Texas had entered into an operating agreement with Texas Gas Corporation to operate the facility because they were not ready to operate it at

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that time when they took title. Q. That's right. A. Yes, I am sure I told you this.

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WALTER B. NEIDERT * * *

DIRECT EXAMINATION

Q. (By Mr. Sachse) Mr. Neidert, would you please state your full name? A. Walter B. Neidert, N-e-i-d-e-r-t. * * *

Q. Were you employed at the Winnie plant by Texas Gas Company? A. Yes, sir.

Q. During what period?

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A. From October, 1957 through February 14, 1963.

Q. And in what capacity, sir? A. I started in the plant as operations superintendent with engineering duties, and later became chief engineer.

Q. What has been your professional education, Mr. Neidert? A. I received a Bachelor of Science in Chemical Engineering from the University of Missouri in 1942.

Q. And after you received that degree, what has been your professional experience? A. I worked for Phillips Petroleum Company in the design and process engineering divisions of the Refining Department, and later in the Foreign Department as chief engineer and assistant superintendent of the Phillips refinery in San Roque, Venezuela.

Q. And that covers the period until your employment with Texas Gas? A. Yes, sir, that covers the period from 1942 through 1957.

Q. What has been your relation to any work which has gone on at the Winnie plant subsequent to February 14, 1963? A. The Engineering Department has prepared plans and lists of work to be done in the plant by Fluor Corporation.

Q. Have you prepared exhibits to show to the Trial Examiner the work that has been done and is under way at my request? A. Yes, sir. * * *

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(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 24-A and 24-B, were received in evidence.)

Q. (By Mr. Sachse) I now show you a plat marked R-25-A and a list attached of money items, that are marked 25-B,

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designated as "Summary Capital Expenditures Completed or Nearing Completion, \$333,300.00," and ask you what it is, sir? * * *

A. This again is a plat representing the areas in which expenditures have been made during or subsequent to February 14, and will be completed in the very near future.

Some of these capital items had not been completed on June 3, at the time these exhibits were prepared.

Q. Now, have you —

Trial Examiner: The time period runs from February 14 to June 3rd, indicated on the exhibit?

The Witness: No, it is not—

Mr. Sachse: The date isn't indicated on the exhibit but that is what the exhibit indicates.

Trial Examiner: That is the testimony?

Mr. Sachse: Yes.

Trial Examiner: And as to some items, there hadn't been actual completion at least as of June 3rd, but you contemplate it in the future?

The Witness: Yes.

Trial Examiner: And what range of time in the near future?

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The Witness: I would say another two weeks from this date these items will be completed.

Q. (By Mr. Sachse) Two weeks from today, June 28th?

A. Yes, sir. * * *

(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 25-A and 25-B, were received in evidence.)

Q. (By Mr. Sachse) I now show you an exhibit marked R-26, designated "Unit Plan In-Progress Conversion Program," and I ask you what it represents? * * *

A. This is a plot plan of the plant designating the proposed location of the units discussed in Mr. Eckholm's testimony yesterday of the in-progress conversion of the Winnie plant.

Q. Now, as I understand it, this does not represent work that has been completed but work that is to be completed on or before February 1, 1964?

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A. That was Mr. Eckholm's testimony, yes, sir. * * *

(The document above-referred to, heretofore marked Respondent's Exhibit No. 26, was received in evidence.)

Q. (By Mr. Sachse) I now show you a plat marked R-27, "Other Petrochemical Projects Under Consideration," and I ask you what this one is, sir? * * *

A. This is a plat indicating the proposed location of the other petrochemical projects as testified by Mr. Eckholm.
* * *

Trial Examiner: As to this last exhibit, these are proposed and under consideration, but that is as far as it's gone? * * *

Trial Examiner: No concrete form of putting these

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projects into effect has yet been undertaken?

The Witness: It is my understanding from Mr. Ekholm's testimony that they are under consideration and have had preliminary studies made. * * *

(The document above-referred to, heretofore marked Respondent's Exhibit No. 27, was received in evidence.)
* * *

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(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 30 through 40, were received in evidence.)

Q. (By Mr. Sachse) Now, please state for the record what each of these photographs shows, identifying it by the number, that is, start with R-30 and say what it shows, and proceed. A. R-30 shows some flameout shutdown devices that are being installed on the boilers.

Q. Is this new equipment? A. Yes, sir. The yellow pieces of equipment are new pieces of equipment and are used in conjunction with other shutdown equipment.

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Q. What is their purpose? A. To shut down the boiler in the event of a flame failure, in the event of a low level in the steam drum, in the event of low fuel gas pressure.

Q. Is this automatic equipment or equipment that is handled manually? A. This is automatic equipment. When it is placed in service, the boiler will shut down automatically on any one of these malfunction signals.

Q. All right, sir. Now, what does R-31 represent? A. R-31 represents a view of the rear of the boiler control panel, showing that the panel for combustion control on the boiler has been completely replaced with new equipment.

Q. For what purpose? Does that have anything to do with automation or not? A. The purpose of this installation was to assure steam capacity for the future expansion of the plant. The previous controls were not sensitive and were not dependable enough to assure this steam rate.

Q. What is R-32, Mr. Neidert? A. R-32 shows scrap material removed from the water treating building and boiler area, in the maintenance renovation of these facilities.

Q. Is this renovation that has commenced subsequent to

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February 14, 1963? A. Yes, sir.

Q. What is R-33, Mr. Neidert? A. R-33 is additional pipe and equipment removed from various areas in the plant.

Q. Is this also subsequent to February 14, 1963? A. Yes, sir.

Q. What is R-34, sir? A. R-34 is additional pipe and scrap removed from the plant, and particular attention is called to several reboiler bundles that were replaced during this period.

Q. What is R-35, sir? A. R-35 is another view of scrap removed, scrap pipe removed from the plant, and

also attention is called to some trays that were removed from a tower in Plant 1 during this shutdown.

Q. What do you mean by trays? A. One of the fractionator towers in Plant 1 was partially retrayed with new high capacity trays.

Q. For what purpose? A. To increase the throughput capacity of that particular tower.

Q. What is R-36? A. R-36 shows some new nozzles placed on the rundown storage tanks in Plant 1 for the purpose of installing remote gauges.

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These gauges will have read-out panels in each control house and at the loading rack office.

Q. What has that to do with the operation of the plant? A. Having the tank gauging immediately available in the control house will aid the operator in keeping track of his inventory and will eliminate the necessity of the operator leaving his control house area to go to the rundown tanks to ascertain his storage situation.

Q. What is R-37, Mr. Neidert? A. R-37 is a general view of the plant at the south end of the Plant 1 area, showing the removal of two idle boilers and their pumps. This area will be used in the installation of the normal paraffin plant.

Q. Is this new equipment? A. No, it is removed—oh, the normal paraffin plant is new equipment and is part of the in-progress expansion of the Winnie plant.

Q. What is R-38, sir? A. R-38 is a view of Plant 1, showing two new water lines that were installed to replace some underground lines that had deteriorated to the point that there was leaks. The piping to the individual tower condensers was also replaced because examination revealed that it was corroded and filled with scale deposits.

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Also shown in this view is the sub-structure for the old Perco reactors.

These reactors were removed and the sub-structure is being demolished to make room for the second platform under the expansion program.

Q. All right, sir. What does R-39 show, please? A. R-39 shows a new reabsorber which is being installed at this time to process the off-gases from the present reformer—the new reformer and the new hydrocracking unit. Also shown are some exchangers that were removed from the naptha tower for the installation of a new large condenser to eliminated an operating problem in this area.

Q. What does R-40 show? A. R-40 shows a road crossing at the north end of the plant, Absorption Plant 1. This road crossing was completely revised. The pipes crossed the road at an elevation of approximately seven foot nine inches, which would not permit any equipment to pass or heavy construction equipment to pass under this piping. In fact, we had to grade the road down to permit our plant fire truck to pass under this piping. To do this renovation of this pipe support required the shutdown of plant 1 as every line leaving the plant 1 area to the north had to be rerouted, and could not be done

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while the plant was in operation.

Q. Now, Mr. Neidert, I understand that new equipment is to be installed in this plant during this year, according to the testimony that has already been introduced. Do you anticipate a complete plant shutdown

hereafter in order to install this new equipment? A. It is not our plan at the present time to have to make another complete plant shutdown.

Q. To what extent did you operate the plant after February 14, 1963? A. During the majority of the time after February 14, 1963, the, what is referred to as the No. 1 compressor area, was in operation, handling the gas through the plant to the sales lines. During the majority of this time we had one boiler in operation for safety reasons and for auxiliary steam for this compressor area turbine on the jacket water system. We also had the absorption system in Plant 2 in operation at a reduced oil rate, to partially process gas for one of these sales lines.

Q. Does that mean that you used this plant only to the extent necessary to keep the pipe line operation going? A. That is correct.

Q. Did you produce either gasoline or energy products or petrochemical products after February 14, 1963?

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A. We did not produce any product in the form that it had been produced under the Texas Gas Corporation.

Q. When did you open the plant? A. I believe we—strike that. I know we started to bring various units on stream on June 3, 1963.

Q. Do you have it in full operation now? A. No, sir. The absorption section of Plant 2 is still down while we complete the retrain of the high pressure absorber and the rich oil demethanizer and the piping that is pertinent to the installation of the new tower.

Q. Well, now, you said that you don't contemplate a shutdown for the installation of new equipment from here on. Why did you shut the plant down after February

14, 1963? A. I believe, if I am not mistaken, I believe the previous question was did we anticipate a total shutdown—

Q. That's right, sir. A. —subsequent to this time.

Q. That's right. A. And I answered that we did not. For the purpose of the work that had been outlined to be accomplished subsequent to February 14, 1963, it was apparent that there was — it would not be possible to make specification product or the product that would be salable with partial operation of the plant under the extent of repairs that were to be done.

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There were several areas where a complete shutdown of the plant was required.

Q. Now, in addition to the problem about the inability to make the product, could you accomplish the repairs that you have undertaken while the plant was in operation?

A. No, sir.

Q. Why not? A. Well, to answer that question, it will probably be easier for me to specify some parts of the repairs that were undertaken that would indicate that they could not be done.

Q. All right, sir. Please do. A. In Plant 2 we took the heads off every reboiler in the fractionating area to inspect the tubes. This inspection revealed that the tube bundles in the reboilers on the deethanizer, depropanizer, debutanizer and isopentane tower were eroded beyond safe use. To repair these, we elected to install new tube bundles. This required the shutdown of all of the fractionation area in that plant. It was the decision of the management of Union Texas Petroleum to inspect all of the condensers and water cooled exchangers in the plant. This required

the shutdown of all the operating units to inspect these exchangers. Inspection revealed a considerable build-up of hard water

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deposits which were removed by acid treating.

This operation can only be done during the shutdown of these facilities.

As mentioned with regard to pictures, the complete combustion controls on the boilers were replaced.

This, as the boilers are, so to speak, the heart of the plant and have to be in operation for any of the processing plants to be in operation, the shutdown to effect the installation of the new controls on the boilers dictated the shutdown of the rest of the plant facilities.

There was some work that had to be done in the cooling tower area, to remove some valves that had cracked in the freeze in 1961 and had been partially repaired to permit continued operation.

In order to remove these valves and the various jump-over piping between the two cooling towers, it was necessary for all of the processing plants to be down.

We shut the compressor room down in order to rework all of the suction and discharge valves on the high pressure compressors.

These valves had leaked to the point where in order to repair the compressor cylinders on these engines, it was necessary to have the pipefitters install a blind to isolate the gas from this area.

In reworking these valves we will make it possible for

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maintenance to be carried out without this necessity of parting the flanges and installing blinds.

I believe these are some examples of areas that required partial or total shutdown of the plant to effect the repairs that had been carried out. * * *

Q. (By Mr. Sachse) Would you say whether or not it would have been feasible to attempt to keep this plant in operation while these repairs and renovations were being made? * * *

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A. No, sir, I do not believe it would have been feasible to have operated the plant during these repairs.

Q. (By Mr. Sachse) Please tell us whether or not any equipment had been ordered and received prior to the shutdown on February 14, 1963. A. Yes, sir, late in December and early in January, a petrochemical division had initiated orders for equipment, for some of the automatic equipment on the boilers, and some of the jacket water control system in the 1-C compressor room.

Q. Do you know what this represented in dollars?

Trial Examiner: Do you know or don't you?

The Witness: I can answer approximately on the boiler control system because that was a bid supply. It amounted to approximately ten thousand dollars worth of material on the boiler controls.

On the jacket water controls, I am sorry, I cannot give a good estimate of that. * * *

CROSS EXAMINATION

Q. (By Mr. Avedon) Mr. Neidert, this equipment that you say was ordered, did it arrive in the plant at this time or was this when it was ordered? A. It was ordered in late December and early January. I

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believe almost all of the Hagen boiler control equipment was in the plant by January 28.

When it was ordered we so stipulated to the supplier that we had that target date for delivery.

Q. The photo, R-30, can you tell me when the installation began on that? A. Some phases of the equipment having to do with this installation were started in early May. I cannot remember exactly when these particular boxes were installed, but there are other pieces of equipment associated with this.

Q. R-31, when did they start installing the equipment that you have designated on that one? A. Some of the piping changes involved in R-31 were among the first pieces of piping that was prefabricated by the Fluor contractor when they moved in. The beginning of installation of the actual controls, themselves, was sometime, I believe, in the middle of March.

Q. How about the line shown by R-32, when was that installed? A. R-32 was not to indicate the installation of a line but the removal of some of the old piping.

Q. Oh, I am sorry. The photos R-33, 34 and 35, show piping in various places around the plant.

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Isn't it true that you would have found somewhat

similar photographs when Texas Gas was operating the plant as far as piping went? A. No, sir. When Union Texas took over the plant, this area had been cleared.

Mr. Estes: Which exhibit was that?

The Witness: R-33. The area of R-33 had been cleared by a previous contractor, dismantling another piece of equipment.

Q. (By Mr. Avedon) Wasn't there equipment that had been dismantled when Texas Gas had the plant and pipe would have been found if not in this actual place in other places? A. From time to time, yes, sir, but at the period we are speaking of, which was in the end of 1962 and the beginning of 1963, we had pretty well cleaned all of the junk out of the plant, as part of the contract.

Q. On R-38, when did the work commence on that? A. This particular piece of equipment was done sometime in May. We had a large rig in to handle a piece of heavy equipment. If I am not mistaken, it was approximately May 9th that we changed out the exchanger on the naphtha tower, and while we had the big rig in for that, we lifted those two very heavy vessels down off of that structure and then demolished the structure.

Q. Did you work continuously at the plant after February 14?

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A. Yes, sir.

Q. Can you tell me when the first time that Fluor personnel began maintenance work after February 14?

A. Approximately February 26, I believe the first workers came in.

Q. How many came in at that time? A. As I remember, there were two electricians, some machinists and two or three pipe fitters were in the first crew.

Q. And how long did they work until they were substantially supplemented? A. Approximately a week.

Q. Before additional personnel started coming in? A. Yes.

Q. Now, the work that they performed, would that be considered or designated as routine maintenance work?

A. I believe one of the first things that was started by the pipe fitter-welders was some prefabrication on piping for the boiler area expansion and for the jacket water controls.

Q. Were you consulted prior to February 14 on the necessity for shutting the plant down? Were you informed that the plant—do you understand the question as I worded it before?

Trial Examiner: Do you understand the question?

The Witness: I believe I do. You asked was I directly

consulted on the necessity of shutting the plant down.

Q. (By Mr. Avedon) Yes, sir. A. No, sir, I was not directly consulted.

Q. Were you informed prior to February 14 that the plant would be shut down on February 14? A. No, sir.

Q. Did you participate in the shutdown of the plant on February 14, as far as supervising and overseeing the shut down? A. I observed the shutdown of the platformer unit in Plant 1.

Q. Can you tell me how long it took to completely drain and depressurize the equipment in the plant? When did that start after the February 14 shutdown? A. We did not drain and depressurize all items of equipment at any

one time. As areas were needed to be worked in, they were then drained and depressured.

Q. When did that commence, the first area that was drained and depressurized? A. I believe—well, to the best of my memory, it would be the second week in March we began to inspect the reboilers and condensers for their condition, and to make this inspection it was necessary to drain and depressure the equipment.

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Q. (By Mr. Avedon) Mr. Neidert, within several days after the shutdown, did new people arrive at the Winnie, Texas plant? A. Yes, sir.

Q. Approximately how many? A. At one time I believe there were between thirty and thirty-five people in the plant.

Q. Were you told what these people were there for? A. I was specifically told what the engineers and the inspectors were there for.

Q. Who told you? A. Mr. —I believe Mr. Quinn told me.

Q. What did he tell you? A. That the engineers were there to aid in the shutdown work and in fact were assigned to the engineering group to help draw up plans that were used by Fluor to make this revision to the plant.

Q. Were you told what the other employees were brought in

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for? A. Not directly, no, sir.

Q. What do you mean by not directly? A. Hearsay. I heard around the plant that they were brought in for train-

ing to be operators for the plant, but I was not told directly that that is what all those people were for.

Q. Did these employees subsequently leave the plant?

A. All but ten left the plant, and I think four were left at the Port Neches terminal.

Q. Were you told why these employees left the plant?

A. No, sir.

Q. How long did they stay in the plant by the way?

A. The ones that left the plant left on the day of Sunday, I think it was the 17th. Is that not correct? Sunday, February 17th.

Q. Do you know when they had arrived? A. They had begun to arrive, some of them, I think, on Friday and Saturday. Some of them came in Sunday. * * *

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Trial Examiner: You referred to engineers and inspectors coming in from outside. Are these professional engineers?

The Witness: Yes, sir, there were two professional engineers.

Q. (By Mr. Avedon) how many inspectors were there?

Mr. Avedon: I am sorry, do you have some more?

Trial Examiner: Well, I was going to ask how many there were of the engineers, the professional engineers.

Oh, a rough approximation.

The Witness: Well, there were two professional engineers and then Mr. Ruston, who was a chemist. I believe that was the professional people.

Trial Examiner: And the inspectors, were the inspectors of a type that worked with the Engineering Department?

The Witness: Claude Sheffield, the welding inspector for the eastern division, came in. He is a man who is used on, or works with the Engineering Department of Union Texas Petroleum on new construction to inspect the welding procedures and finished welding in the erection and renovation of plants.

Trial Examiner: Is this a supervisory type of job?

The Witness: I believe so, yes.

Trial Examiner: Was there an equivalent or counterpart

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under Texas Gas Corporation within the unit of employees represented by the Charging Party here?

The Witness: No, sir.

Q. (By Mr. Avedon) In all, do you know how many inspectors—you said there were two engineers. How many inspectors came into the plant? A. Two inspectors. There was Mr. Sheffield, the welding inspector and the electrical inspector that has been mentioned in previous—

Q. Was that Mr. Hanks? A. Mr. Hanks, yes. * * *

Q. You said a number of people came into the plant after the shutdown. Two of them were engineers. Two of them were inspectors. A. One of them was a chemist. Mr. Quinn and Mr. Gotcher had been there. And then there were people represented to me to be from the other plants as operators.

Q. Do you know what Mr. Hanks' job was? A. I was told that he did the electrical work at the eastern division plants.

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CROSS EXAMINATION

Q. (By Mr. Ladwig) You said that you were not consulted when the plant was shut down on February 14? A. That is correct. * * *

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Q. What maintenance work did you see as it was being performed that would require the partial or total shutdown of the plant? A. Well, as I have testified, the inspection of all of the reboilers and condensers required a total shutdown of the plant or a shutdown of each operating unit, and it was handled as a total shutdown, in this case.

Q. When did they start doing the actual work on that? A. As I remember, I testified approximately March 14, * * *

EXAMINATION

Q. (By Trial Examiner) The various changes about which you testified, as reflected in Respondent's Exhibits 30 through 40, these photographs, changes and additions and removals, would any of these have been necessary normally without any plans for conversion to a petrochemical plant? A. I believe in the course of normal operation—no, wait a minute, those are not—well, yes, indirectly it is. In the course of normal operation the tube bundles in these

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reboilers would have failed and would have shown up and required replacement. * * *

Q. (By Trial Examiner) You are referring just to R-34. Now let me put the same general question. If it were desired, let's say, by Texas Gas Corporation continuing to operate the plant, to improve existing processes for the normal operations of an energy plant, would any of these changes and additions have been desirable? A. I don't know whether it is a matter of record or not, but Texas Gas had been pursuing an expansion program of their own from October 1, 1961 through the period up to the acquisition that some features was parallel to the program that is now being put into effect by Union Texas Petroleum. Under that program a number of these changes would have been effected by Texas Gas Corporation.

Q. You couldn't be more specific than that, which changes within the ten photographs identified and admitted as Respondent's Exhibits 30 through 40? A. Well, I will go further. The program as outlined by Texas Gas called for the installation of a hydrocracking unit and a second platformer, which required a similar

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dependability from the boiler plant, this was specifically in the boiler controls. These were in the plans as formulated by Texas Gas. They are R-31 and R-30. The naphtha tower condenser, R-39, would have been changed in the Texas Gas program, as well as some renovation as represented by this new tower would necessarily have had to have been a part of this. Our engineering had not proceeded to the extent that we had sized a tower for this particular operation. The subsequent engineering did show this tower and ours would have been enough similar in that respect to have required a similar tower. In all likelihood, we would have done the work on the pipe line at the north end of

Plant 1, Exhibit R-40. This pipe lane was congested to the point where it was extremely difficult to route new lines into the plant, and the new units would have required several lines to come in from this direction into the Plant 1 area. The demolition of the Perco reactor, as shown by R-38, would have been carried out under our program for site preparation. I believe that is all that are specific. We would undoubtedly have removed a great deal of piping which could have been shown as these piles of junk piping, but I would not venture an opinion as to whether it would be

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larger or smaller.

Q. And you are talking within the framework of an expansion program, which had been drawn up by Texas Gas Corporation. Beyond that is it conceivable that additions would have been made to the expansion program as a result of failures and desires for improvement in the existing facilities, to cover other of the work that is reflected in these exhibits? A. I am sure that in the construction and revision of the present plants, certain of the deficiencies of the equipment that appeared in the program as put forth by Union Texas Petroleum would have shown up in our program. * * *

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Q. Now, my question is whether after February 14 the work done for a period of time, say, months, in accordance with the existing plans, could have been done generally by the employees, the same classifications of employees, who were employed before February 14? A. The type of work was similar. The quantity of work was far greater.

Q. The skills involved? A. The skills involved were similar, yes. * * *

REDIRECT EXAMINATION

Q. (By Mr. Sachse) Would the maintenance group as represented by OCAW alone — no, I will strike that. Would the maintenance group as covered by the collective bargaining agreement with Texas Gas have been able to accomplish, unaided, the program that has been accomplished since February 14, 1963 to June 3rd, 1963? * * *

Trial Examiner: You mean without the electricians and

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the pipe fitters?

Mr. Sachse: No, no, I am including the electricians and the pipe fitters. * * *

Trial Examiner: Well, that excludes electricians and pipe fitters, doesn't it?

Mr. Sachse: Well, I didn't mean to exclude them. Let us add the electricians and the pipe fitters, and I put the same question. * * *

A. No, sir, under the Texas Gas agreement, we had approximately twenty-five maintenance workers. The high point, if I remember correctly, under Fluor has been one hundred-thirteen employees.

Trial Examiner: That is the high point. What was the average during this period of time?

The Witness: For a long period during this interim there were approximately ninety employees in the plant.

Trial Examiner: For a long period? About how long?

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The Witness: Over a month there were in excess of ninety, and prior to that I think the figure was in the seventies.

Trial Examiner: What was the minimum number?

The Witness: Well, the minimum was in that first week, when I think there were approximately ten.

Trial Examiner: Well, after they were supplemented, after that first week.

The Witness: I believe we got to seventy very quickly after the first group came in, as I remember, looking at payrolls, they reached a plateau very rapidly, and then held that plateau for a long, extended period.

Trial Examiner: And how many are employed in the maintenance group now?

The Witness: It is over a hundred at this time, I believe.
* * *

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CLYDE V. QUINN * * *

DIRECT EXAMINATION

Q. (By Mr. Sachse) Mr. Quinn, by whom are you now employed? A. By Union Texas Petroleum, a Division of Allied Chemical. * * *

Q. What is your present position with the company?

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A. Area Superintendent of the Eastern Division of Union Texas Petroleum. * * *

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Q. Were you thereafter and prior to February 14, 1963, stationed at the Winnie plant? A. Yes, sir, I was.

Q. To what extent and for what purpose? A. I was told to go down there for the sole purpose of okaying invoices and bills as presented at the Winnie plant.

Q. Were you shown a copy of the operating agreement between Texas Gas Corporation and Union Texas? A. Not right at that time. I was told about what the content was, but I wasn't shown it.

Q. Who told you? A. Mr. Sutherland.

Q. And say again, please, what your instructions were. A. My instructions were to go to the Winnie plant and O.K.

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all invoices. I might clarify that a little bit.

Allied Chemical at each plant has one person who is designated or whose signature is designated to approve all bills. If this approval is not on the bill, it is sent back to the plant for that approval. And with the operating procedures, all the bills would come back to me, all the invoices would come back to me for approval, as they came into the Houston office, before payment was made on them.

Q. Did you have anything at all to do or were you charged with any duty with respect to the production operations of the Winnie plant? A. No, sir, I was told to go down there and observe but not to have one thing to do with the operation.

Q. Did you have any duties with respect to the maintenance operations at the Winnie plant, and if so, what were they? A. The only duties I had in respect to that

was in regards to money being spent. The presented projects to me, some of which were probably in that folder that was—or that was entered here. Wondering what it was until just a short time ago. But there were a lot of their projects, projected projects for 1963, and in the January 11 meeting, staff meeting, where they invited me to attend, that was the object primarily of that meeting was to consult with me on what could be done about these projects.

Mr. Neville told me that some of these projects had been

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projected since 1954, and that they, some of them needed to be done, and they would like to have them done.

Well, the scope of the money on several of the projects was such that I wasn't—I didn't have the authority to authorize such projects, and I had to take them up with management before I could authorize or tell them to go ahead or not to go ahead with several of these larger projects.

Q. Did you have anything to do, sir, with the direction of the work force at the Winnie plant? A. No, sir.

Q. Did you undertake to give any directions to the work force at the Winnie plant? A. No, sir.

Q. When were you told that Texas Gas would be asked to shut down the plant on February 14, 1963? A. On the morning of February 14.

Q. Who told you? A. Mr. Sutherland.

Q. What was your function, if any, with respect to that? A. I didn't have none.

Q. Did you undertake to give any directions to anyone as to how the plant should be closed? A. No, sir.

Q. If I understood the testimony of other witnesses given heretofore, you were not always at the Winnie plant from

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January 1 to February 14, 1963, were you? A. That is correct.

Q. Tell us, if you please, sir, about your attendance there. A. I have other duties besides the Winnie plant. I have four more large gasoline plants that are under my supervision, and when they have trouble, I have to go to these various locations, or if they need help, I have to go help them.

And during the second week of January, I spent the whole week in Shreveport. And subsequently to that, there were several days that I was either in Houston or in New Orleans or some—I would say that two to three days was the most I spent at the Winnie plant.

Trial Examiner: A week?

The Witness: A week.

Q. (By Mr. Sachse) Now, sir, when you were absent from the Winnie plant, was there anyone else in the employ of Union Texas who replaced you? A. Yes, sir, Mr. Gotcher.

Q. For what purpose? A. For the same purpose I was there, for the approval of all bills for payment.

Q. And no other? A. No other purpose. * * *

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CROSS EXAMINATION * * *

Q. After the shutdown were you told the new personnel would arrive? A. Yes.

Q. Who told you that? A. Mr. Sutherland.

Q. Did he tell you how many people would arrive?
A. Approximately thirty-five.

Q. Did he tell you what the purpose of these people would be? A. Operation personnel. * * *

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EXAMINATION

Q. (By Trial Examiner) Did you have anything to do with supplying the thirty outside employees to the Winnie plant? A. The only thing I had to do with any supplying of anybody at the Winnie plant was supplying inspectors, the inspectors.

Q. Just the inspectors? A. The inspectors come under, and the chemist, come under my jurisdiction.

Q. And they came from other plants of Allied, of Union Texas? A. That's right.

Q. Do you know where the thirty-five employees came from? A. They came from Louisiana and came also from West Texas, all over Texas and Louisiana.

Q. And they were employees of Union Texas Petroleum? A. Yes, sir. * * *

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JOHN A. SUTHERLAND * * *

Trial Examiner: Give the reporter your name and address.

The Witness: John A. Sutherland, S-u-t-h-e-r-l-a-n-d, 1910 East 35th Street, Tulsa, Oklahoma.

Q. (By Mr. Sachse) Mr. Sutherland, how old are you, sir? A. Thirty-nine.

Q. What has been your professional education? A. I received a Bachelor of Science degree in Chemical Engineering from the University of Missouri in 1948.

Q. Will you please tell us what has been your professional experience since that time? A. On graduation I went to work for Stanolind Oil and Gas, which is a subsidiary company of what is now Pan American Petroleum. Worked for that company as a petrochemical junior engineer, and as a process engineer for three and a half years.

Subsequently to that I went to work for Sunray Oil Corporation as a senior operating engineer, and worked for

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that company in their natural gasoline and gas liquids department for three and a half years, which brings us up to 1955, at which time I came to work for Allied Chemical, or a predecessor of this division, Texas Natural Gasoline Corporation, which is now the Union Texas Petroleum Division.

Q. What position do you have with Union Texas Petroleum Division of Allied Chemical? A. I am general manager of plant operations.

Q. How long have you had that position? A. I have had that particular title, I believe, for two and a half years.

Q. What plants are under your supervision? A. All of the natural gas liquids plants, including the Winnie plant.

Q. Now, did I ask you prior to your going on the stand to make a list of the plants and the number of hourly employees at each of the plants? A. Yes, sir, you did.

Q. Do you have that list with you? A. I believe I do.

Q. Can you give that information from memory or do you need— A. I would rather list off the hourly employees from this list, if I may. * * *

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A. We have our Wimberly plant, near Abilene, Texas, which has approximately fifteen hourly employees, our Benedum plant, near Rankin, Texas, Walnut Bent, and by the way—

Q. (Mr. Sachse) Did you say how many at Benedum?

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A. Thirty-five hourly employees, and that includes a satellite plant, our Pembroke plant.

Our Walnut Bent plant, near Gainesville, Texas, which employs eighteen hourly employees, including those staffing a satellite plant called our Sandusky plant.

Our Perkins plant, near Colorado City, Texas, employing forty hourly employees.

Our Glendive plant, near Glendive, Montana, employing approximately ten hourly employees.

Our Toca plant, which employees approximately hourly employees.

Mr. Avedon: What state is Toca in?

The Witness: That is in Louisiana, near New Orleans.

That includes two satellite plants. These are french names. Pointe Alahache and Cox Bay.

Our Rayne plant, near Rayne, Louisiana, which employs approximately fifteen hourly employees.

Our Sykes plant, near Ballinger, Texas, employs twelve hourly employees.

Our Eunice plant, near Eunice, Louisiana, employs approximately thirty hourly employees.

And our Sligo plant, near Shreveport, Louisiana, employs twenty hourly employees.

If my arithmetic is right, that is approximately two hundred-fifteen.

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Trial Examiner: How many plants?

The Witness: That is fourteen plants.

Trial Examiner: Thank you.

Q. (By Mr. Sachse) Do any of those plants have any unions representing the employees? A. No, sir, they do not.

Q. Since you have been in charge of this division, has any union or the employees of any plant claimed to have a union represent them? A. No, sir, they have not.

Q. When did you first visit the Winnie plant? A. In the month of August, as I recall, 1962.

Q. And for what purpose? A. Principally as a visitor. We were contemplating the acquisition at the time, and I was down there just familiarizing myself with the facilities.

Q. Did you take part in any way in the considerations leading to the agreement to purchase the Winnie plant? A. Not directly.

Q. When were you told that you would have some responsibility in connection with the Winnie plant? A. Late in the fall of 1962. I don't know exactly when. Sometime in November.

Q. Now, you were in this room a while ago when Mr. Quinn was on the stand, weren't you?

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A. Yes.

Q. Will you please tell the Trial Examiner when you directed Mr. Quinn to come to the Winnie plant? A. It was the last working day in December. I believe it was December 30th, but I would have to check the calendar.

I called Mr. Quinn, who was then at Rayne, Louisiana, and told him that we were acquiring the Winnie plant, and that his sole responsibility, when he went to the plant at that time, was to gauge the tanks—excuse me, to witness the gauging of the tanks, participate in gauging of the tanks, I guess, is the proper word. And to await further orders from me.

Q. What further orders did you give Mr. Quinn?

Mr. Avedon: When was this? Could you establish when the orders were given?

Mr. Sachse: Yes, sir, I will.

A. Immediately after New Year's, I believe it was January 3rd, I came to Houston and Mr. Quinn came into a meeting. At that time it was explained to him that we had an operating agreement with Texas Gas Corporation, and that he had been named as representative at the Winnie plant. That his sole responsibilities were the preservation of our interests in that plant, which meant solely the approval of cash expenditures.

He was instructed that this was an independent contract,

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and that he was in no way to participate or interfere with the operations of the plant facilities.

Q. (By Mr. Sachse) Did he have anything to do with the plant personnel? I mean, did he have any control of the payroll? A. No.

Mr. Avedon: I am going to object to that question, I think. Are we counting what he was told to do or—

Mr. Sachse: Well, yes, I am asking him for the instructions.

Mr. Avedon: Well, that is what I wanted to—

A. He was told that he was to have no authority over the plant personnel, per se, that he was to observe the operation, report to me any irregularities or any problems arising, but he was in no way to instruct or interfere with the operation of the facilities.

Trial Examiner: Was he to observe for irregularities?

The Witness: Yes. In other words, Mr. Quinn was there to observe the operation of the plant so we could begin to assess the nature of the operation.

Q. (By Mr. Sachse) What sort of irregularities do you mean, Mr. Sutherland?

Trial Examiner: Or what nature of irregularities did you tell Mr. Quinn?

The Witness: Well, when I refer to irregularities, I

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speaking merely of anything that we would consider as items that would lead to major cash expenditures, which we might, through contact with Mr. Gladden, bring up, or something of that nature.

Mr. Quinn's sole responsibility there was to observe the

operation and report to me, as he did in the other plants, and at the same time approve cash expenditures.

Trial Examiner: When you told Mr. Quinn of his sole responsibilities, the preservation of the interests of Union Texas Petroleum in the Winnie plant, is that the way you put it to him, or did you say that this is confined to the approval of the cash expenditures?

The Witness: I explained to him it was confined to the scope of the operating agreement, and that this was in essence the approval of cash expenditures.

Trial Examiner: You told him that?

The Witness: Yes, sir.

Trial Examiner: Please continue.

Q. (By Mr. Sachse) Did you become concerned directly or through Mr. Quinn or through Mr. Gotcher with any personnel problems at this plant from January 1 through January 14? A. Definitely not. * * *

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Q. (By Mr. Sachse) Were there reports submitted to you with respect to the acquisition of equipment or the installation of new equipment? A. Yes, there were.

Q. Were you, yourself, at the plant between January 1, 1963 and February 14, 1963? A. No, sir, I was not.

Q. Did you come to the plant on January 14, 1963? A. January 14, no, sir.

Q. I beg your pardon, February 14, 1963. A. Yes, sir, actually I was at the plant the morning of February 14.

Q. For what purpose were you there, Mr. Sutherland?

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A. On February 13 I had been told that on the morning of February 14, a letter from Mr. Marshall would be handed to Mr. Gladden, terminating the operating agreement that then existed.

I was there—

Q. Excuse me. By whom were you told? A. I was told by Mr. Marshall.

Q. Yes, sir. Please continue. You were there, you were saying. A. I was there to contact Mr. Neville as the representative of Texas Gas Corporation, to implement the contents of that letter.

The purpose of my visit to the plant on the morning was to contact first Mr. Neville, deliver to him that letter, which I did at approximately 8:10 a.m., or thereabouts, and tell him that as the representative of Texas Gas Corporation at the plant site, he would be very shortly hearing from his boss, Mr. Gladden, but I, as the representative of Union Texas Petroleum Corporation, was giving him a request to shut the plant down, maintaining only those facilities necessary to operate the pipe line, and to send the hourly people home at the end of the daylight shift, or approximately 4:00 o'clock that afternoon.

I further explained to Mr. Neville that this was my sole direction to him, and that anything further said would be

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strictly of an advisory nature.

Q. Did you undertake to tell Mr. Neville how to shut the plant down? A. I did not.

Q. Did you direct any other employee of Union Texas

to tell Mr. Neville how to shut the plant down? A. No, not only did I not do that, but to clarify that position, I told—incidentally, immediately subsequent to the meeting with Mr. Neville, where Mr. Albritton and Mr. Woolfolk were present, Mr. Neville received a phone call, which I was told by the switchboard operator was from Mr. Gladden, and then the operators were called in. When I say—excuse me, the foremen were called in, the supervisors were called in to this meeting. Mr. Woolfolk introduced me to the supervisors, and then I told them in essence what I had just told Mr. Neville, that I had asked him as representative of Union Texas—I am sorry, Texas Gas Corporation, to perform the functions I had just described.

I further stated that Mr. Woolfolk, due to his familiarity with the operations in the past, which incidentally I did not have, and due to his work on the project work that was being under consideration at that time, would serve in an advisory capacity, and that he was giving no orders, and that I was giving no orders to the group from that point forward, and that the shutdown was to proceed under Mr. Neville's direction.

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Q. Did you offer employment on behalf of Union Texas to the supervisory personnel of Texas Gas? A. Yes, at that meeting I announced that due to our lack of familiarity with the supervisory personnel at the plant, we would make no effort to make a final selection of personnel at that time for staffing of the plant, and that all supervisors at the plant would be, effective the end of the daylight shift, or approximately 4:00 p.m., would become employees, with a temporary status, of Union Texas Petroleum, a Division of Allied. * * *

Q. (By Mr. Sachse) I have marked R-41, and I have exhibited to General Counsel, and counsel for OCAW, a paper which I now show you, sir. What is it? A. This is a memorandum that I wrote to the file on February 13, confirming my understanding with Mr. Marshall as to the employment offer that we would make to the salaried personnel at the Winnie plant.

Q. Did you make this for your guidance—A. I did.

Q. —in meeting them on the following day?

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A. Yes, sir, I carried a copy of that and read from it.

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(The document above-referred to, heretofore marked Respondent's Exhibit No. 41, was received in evidence.)

Q. (By Mr. Sachse) Now, Mr. Sutherland, were you responsible for staffing the plants under your supervision?

A. Yes, sir.

Q. Were you responsible for staffing the Winnie plant?

A. Yes, sir.

Q. Did you undertake to staff the plant following the shutdown by Texas Gas Corporation on February 14, 1963?

A. Yes, sir.

Q. What steps did you take, sir? A. May I retrogress a little bit before February 14 to clarify my plans?

Q. Well, to clarify the question, what steps did you take? A. Well, it was originally planned to take over the plant in a shut down condition, completely shut down, no one in the plant.

This was the plan under which the negotiations and my staffing plans were proceeding in the month of December.

During the month of December I had made tentative staffing plans to assemble a group of approximately thirty-five of our own hourly employees, which could be assembled. There were that many available in our existing operations.

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And I had planned to take this staff of thirty-five employees into the shut down Winnie plant whenever—

Q. What were these thirty-five people doing? A. These were operators in all of our various plants. They were scattered all through each one of our plants.

Q. And they had jobs to do then, they were doing jobs? A. They had jobs, but we had men who were not fully occupied, in the lower echelons, that could be brought up into these jobs.

We actually had a surplus staff of personnel at that time.

Q. Please continue. A. All right.

It was my plan at that time to bring these thirty-five operators into a cold plant. I had this staffing plan set up. And I had made no other staffing plan.

The situation at the Winnie plant was, as reported by Mr. Ekholm, as far as the engineering changes, and all the other work, was in a constant state of change, and I felt there was no reason to go ahead and set up on each new contingency a new staffing plan.

Therefore, I was proceeding with my original staffing plan of putting in thirty-five men for staffing a cold plant.

Trial Examiner: Did you consult with anybody superior to you?

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The Witness: No, sir.

Trial Examiner: This was entirely your own initiative?

The Witness: That's right.

Trial Examiner: And responsibility?

The Witness: That's right.

Then on February 14, at the time of the shutdown, I felt that these thirty-five men would be desirable in the plant for any contingency that might develop.

As far as the immediate plans for start-up or extended shutdown, they were not firm.

I was given this order on February 13, and it came as something of a surprise to me.

I went down to the plant on February 14, and then after the shutdown, sent out word for these thirty-five men to report to the plant.

In the meantime we proceeded with our shutdown arrangements, using the existing people to carry on the operation.

By February 17, the shutdown had progressed to the point where I could report to Houston and report the state of the staffing, the state of the shutdown and the condition of the Winnie plant.

I then went in to Houston, made my report, and an evaluation was made of the status of the engineering work, and a decision was made to extend the shutdown, to move into a full and extended shutdown of the Winnie facilities.

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For this reason I returned to the plant, made the decision to reduce the crew to a skeleton force, making possible only the operation of the compression facilities, the terminal, the loading rack, the boiler, and dehydration facilities.

I sent the remainder of the thirty-five operating personnel back to their home plants, the plants from which they came.

I kept my senior men.

There were nine of what I call "A" operators and one that we class now a "B-1" operator.

Q. (By Mr. Sachse) Did you use supervisory personnel after the 4:00 p. m. shift on February 14, 1963, for work which had been formerly done by hourly employees? A. Yes, sir, I did. * * *

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Mr. Sachse: It is stipulated that Exhibit R-42 is a copy of the letter of February 22, 1963, sent by Union Texas Petroleum to all who had been employed by Texas Gas Corporation at the Winnie plant relative to employment by Union Texas Petroleum. * * *

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Mr. Sachse: That R-44 is a copy of the letter sent to each of those who sent in a completed application. * * *

Mr. Sachse: That R-45 is a subsequent letter sent to all of those with respect to R-44, making an appointment for interviews, if the applicant was still interested.

(The document above-referred to was marked Respondent's Exhibit No. 45 for identification.)

Mr. Sachse: That R-46 is a copy of the letter sent to all those who were offered employment at the plant subject to physical examination. * * *

Mr. Ladwig: In connection with that stipulation I would like to offer to stipulate that two employees, Mr. Thomas McClure, and Mr. Carl Satcher, were denied applications because they had worked in maintenance, although McClure had worked previously in operations for about three years, and Mr. Satcher in operations for about fifteen years.

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Mr. Sachse: In that connection, we offer as R-46—

Trial Examiner: 47

Mr. Sachse: 47, a letter from the company to Mr. McClure on March 29, 1963, and a letter from Mr. McClure to the company as R-48.

Mr. Avedon: What is the date of that?

Mr. Sachse: March 25, 1963. And a return registered receipt—is it registered or certified?

With a return receipt of the Post Office, showing the delivery to Mr. McClure of his copy of R-42, February 26, 1963, which we will mark R-49.

And in connection with Mr. C. E. Satcher, we offer R-50, the return receipt of the letter sent to him on February 22, which the Post Office receipt is dated February 26, 1963. * * *

Mr. Sachse: We stipulate that we have no reply from Mr. Satcher.

Trial Examiner: Does that conclude the proposed stipulations?

Mr. Ladwig: I would also like to propose that we stipulate that pursuant to the last paragraph of Respondent's 42, the company did not permit any of the former maintenance

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employees to apply for jobs at the Winnie refinery. * * *

Mr. Sachse: We did not knowingly permit them. * * *

Trial Examiner: The stipulation is admitted.

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(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 42 through 50, were received in evidence.) * * *

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Mr. Sachse: It is stipulated that R-52 and R-53 represent the Texas Gas Corporation organization chart as it existed prior to the purchase of the Winnie plant by Allied Chemical, and that R-53 represents the changes in the organization which were planned at the time Allied Chemical was considering the purchase of the Winnie plant, both charts being taken from the report to the Board of Directors of Allied Chemical, which led to the resolution to attempt to acquire the property, which resolution has already been offered in evidence. * * *

Mr. Avedon: I will stipulate to that.

Trial Examiner: The stipulation is admitted.

Respondent's Exhibits 52 and 53 are admitted.

(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 52 and 53, were received in evidence.)

Mr. Sachse: Now, we offer, produce and file in evidence the exhibit marked R-51, which does not relate to the pipe line organization, which is a separate corporation, but

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otherwise shows the changes which were actually effected in the Texas Gas Corporation organization after the purchase of the Winnie plant by Union Texas Petroleum.

Trial Examiner: Purports to show or allegedly shows.

Mr. Sachse: Well, it's presented as showing, yes, sir.
* * *

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Trial Examiner: Are any of the functions previously performed by Texas Gas Corporation personnel now being done as part of automated or centralized operations of the Respondent?

The Witness: Yes, sir.

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Trial Examiner: Elsewhere?

The Witness: Elsewhere?

Trial Examiner: I mean away from the Winnie plant.

The Witness: No.

Trial Examiner: Well, what did you mean by "yes"?

The Witness: I thought you were going to say that automation was a contributing factor in the force reduction at the Winnie plant.

Trial Examiner: No. Outside of this exhibit, itself, as not reflected in this exhibit, are any of the functions formerly performed by Texas Gas Corporation personnel—

The Witness: No, sir.

Trial Examiner: —being done by—

The Witness: Automation.

Trial Examiner: No, by other personnel of Respondent not reflected on here.

The Witness: Now, I don't understand the question, sir. Would you repeat it?

Trial Examiner: Will the reporter please repeat the question?

(Record read.)

Mr. Sachse: Well, now, I would like to answer you and admit, of course, that to some extent your question has to be answered affirmatively.

For example, the position of General Counsel and

Corporate Secretary is no longer needed because the General Counsel of Allied Chemical Corporation is the General Counsel for all of its branches.

Trial Examiner: Yes.

Mr. Sachse: For example, the President of Allied Chemical Corporation is the President for all of its branches.

For example, the Controller or some such officer for Allied Chemical Corporation would be the Controller for all of its branches.

And to that extent your question would have to be answered affirmatively.

But I think not otherwise, though the witness can answer the—

Trial Examiner: All right. Let's confine the question to clerical functions. Any of the clerical operations being performed at some central facility. Do you understand that?

The Witness: Yes.

Trial Examiner: That was formerly done at the Winnie plant by clerical personnel there under Texas Gas.

The Witness: Not at the Winnie plant. The clerical functions done formerly at the Winnie plant are being done at the Winnie plant now.

Trial Examiner: The same clerical functions?

The Witness: Yes.

Trial Examiner: And none of those clerical functions is

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being taken over at any facility of the Respondent away from the Winnie plant?

The Witness: No. Now, the Texas Gas Corporation clerical functions—

Trial Examiner: Well—

Mr. Estes: Would you let him finish? I know what the problem is here, Mr. Trial Examiner.

The Witness: The Texas Gas Corporation clerical functions, which are shown here, as an example, originally by twelve clerks, have been incorporated into Allied Chemical's, Union Texas Petroleum's clerical functions with automation, you see.

Trial Examiner: Yes.

The Witness: And that function is brought in.

Trial Examiner: That is the question.

The Witness: But the clerical work at the plant proper, and I believe your question, sir, was at the Winnie plant, the clerical work at the Winnie plant is being done as it was.

Mr. Estes: If I may, Mr. Trial Examiner, there were a number of centralized functions performed at the Houston office which were taken over by Allied Chemical.

Mr. Avedon: Such as purchasing?

Mr. Estes: Yes, marketing, sales, those things.

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Q. (By Mr. Sachse) Mr. Sutherland, after the plant was closed on February 14, 1963, and examination was made, was the plant found to be in good condition? A. No, the plant was found in extremely bad condition. Mr. Neidert has already testified to the condition of some of the internal piping. * * *

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A. As an example, the boiler feed water lines were clogged almost solid, due to the improper point of feeding of chemical. It was necessary to replace the entire boiler feed water system as a result of this extremely bad corrosion condition. This is a type of piping that necessitated a complete shutdown. * * *

Mr. Sachse: I now want to offer some physical exhibits through this witness, illustrative of the condition of the piping at the plant.

Q. (By Mr. Sachse) And I present you that one and ask you what it is? A. This is the cooling water line to the pumps in the

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No. 1 absorption plant, showing two things, a severe deposition of scale and at the same time the nature of the scale being a corrosion product, showing that the line was both badly scaled and badly corroded.

In this particular instance the scale has been deposited here as a result of corrosion elsewhere in the system. This was due to an operating practice in the plant.

The cooling water was actually maintained in an acid condition, which was a rather bad operating practice that had been continued for a number of years, I think the theory being that if they kept the acid in there, they would be able to remove the scale, when in actuality they were merely moving the scale from one point to another, and were eating up the entire water system.

Q. Now, I take it that you didn't cut the pipe, yourself, to bring it here? A. No, I requested that this piece of pipe be cut by Mr. Cating at the plant.

Q. You had it done at my request? A. Yes, sir.

Mr. Avedon: Tell me when the pipe was cut.

The Witness: This specimen was cut from the scrap pipe pile approximately—during the month of May.

Q. (By Mr. Sachse) All right, sir. A. But this was taken out of the system after the shutdown.

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Q. I show you another piece of pipe and ask you what it is. A. This is a similar line in the No. 1 plant.

This is the one shown in Mr. Neidert's pictures of the replacement of the cooling water lines to the condensers in the overhead structure.

You will notice once again both that the walls are badly corroded and that there is this severe deposition of corrosion material.

Actually right at the ground level we had numerous instances of where the pipe would fail merely as you would walk past and the person's foot would kick against the pipe there, and a spray of water would come out.

The pipe was in very bad condition and this once again necessitated a complete shutdown for the replacement of the piping in this area.

Q. What is the diameter of the first pipe I showed you? A. That is a piece of two-inch pipe.

Q. What is the diameter of the second pipe I showed you? A. That is a piece of ten-inch pipe.

Q. Give us an estimate, please of the extent of the corrosion in depth in the ten-inch pipe. A. The pipe in this particular specimen is eaten about half away. * * *

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A. This is the boiler feed water line and shows the result of this other very poor operating practice of feeding the chemicals for the treatment of the boilers through the feed water line.

You will notice that there is a hairy deposit that takes up almost half the interior of the pipe. This is a result of a practice which has been discontinued in almost all plants. The chemicals are fed directly into the boiler, but we found when we went into the Winnie plant, that they were still feeding these chemicals in through the boiler feed water lines, and it was necessary to remove most of this type, although it wasn't corroded, because we could find no way of removing this material from the lines, and we literally had to replace the pipe to get that boiler feed water pump capacity that we required.

Q. (By Mr. Sachse) What is the diameter of that pipe, sir? A. This one is also ten-inch pipe.

Q. To what extent is the corrosion evident in it?

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A. This is not corrosion, sir. This is a deposition of a scale resulting from improper chemical feed.

Q. Thank you for the correction. And to what extent is the deposition of the scale? A. Approximately half of the interior of the pipe, half of the interior diameter. * * *

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CROSS EXAMINATION

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Q. And the geologist, No. 15, was he retained by Union Texas? A. No, the cross-hatching indicates that the position is no longer existent, and if there is no note over here, this means the man has been terminated.

Q. But Union Texas does have geologists on its payroll?

A. Yes, indeed.

Q. And the function of the geologist for Texas Gas is now being performed by Union Texas' geologists? A. Right. No geologist was added to the organization to take this work, you see. This is being carried by fractions of our other geologists.

Q. Right.

Trial Examiner: In what other categories is the same thing true?

Mr. Avedon: That will probably simplify my question.

The Witness: In the case of Mr. A. C. Gladden, who was the executive officer, of course, some of his function has

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been taken over by Mr. J. Howard Marshall, President of Union Texas Petroleum Division.

In the case of Mr. J. L. Buvens, Vice-President, Purchasing and Marketing, many of his functions have been taken over by Mr. Wilkinson.

Q. (By Mr. Avedon) That is the equivalent of the Union Texas official? A. Yes, sir. In the case of Mr. E. D. Elliott, his functions have been taken over by the Allied Chemical Legal Department. I wouldn't say specifically an individual.

In the case of Mr. R. M. Woolfolk, you might say that a portion of my time takes Mr. Woolfolk's time. I would say approximately, on the basis of a per plant pro rata, it would be one-fifteenth or thereabouts. Actually probably due to the magnitude of the Winnie operation, why, more of my time is devoted to Winnie pro rata.

Q. Mr. Woolfolk is currently with— A. Mr. Woolfolk is currently with the company, but in an entirely different capacity.

In the case of the internal auditor here, Mr. Homer Martin, his function is being carried by our internal auditing department downtown.

Probably Mr. Claude Harris would be the prime man having that function.

And Mr. Harris probably also serves in the function of

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Controller. At least this is taken over by our accounting management.

And such is the case with Mr. V. W. Welch, the assistant controller.

The manager of the credit and personnel has been retained, but the personnel functions under that have been taken over by our Personnel Department.

Q. Which you had in existence before you transferred them? A. That's right. * * *

These secretaries, of course, to these various officers have just, as the officers, the office was filled, why, the secretary was not taken over. If the square is cross-hatched out, then that secretary, that job has been taken over by the secretary of the corresponding individual.

Q. (By Mr. Avedon) Does that mean that the secretary was not transferred to Union Texas' own payroll?

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A. That's right, if there is a cross-hatch here, that office, that job, was terminated and that individual has not been transferred unless there is a note to that effect over here.
* * *

A. Let's see, I believe we covered the manager in the Land Department, didn't we?

That actually went into our Land Department here downtown, as did the manager of the Reserve Department, and the geological.

In the case of the Winnie plant, the secretary to the plant superintendent, well, actually to the General Superintendent, was—that job was terminated and was not refilled.

Q. Wasn't that job terminated before —. A. Yes, it was. But this reflects the organization—actually, that job was terminated during the period of the operating agreement.

Q. All right. A. The job of junior clerk was terminated.
* * *

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Q. (By Mr. Avedon) The secretary and insurance clerk, do you know when she was terminated? A. I believe probably on January 1, but I can't answer with certainty.

Q. If you don't know just say you don't know. A. Yes. I will just try to help you get a general perspective of when these things happened, but I can't give you the specific, because I am not the personnel man and I don't handle these terminations.

Q. How about the clerks under the controller's office, when were they terminated?

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A. Three were retained. The remaining nine were terminated on January 1 or shortly thereafter.

Q. Were any of them put on the Union Texas payroll?

A. No.

Q. Was that department taken over by Union Texas on January 1? A. Yes, it was.

Q. And the maintenance and construction foreman, he was taken over on the Union Texas payroll, wasn't he?

A. Yes, that was Mr. Ellis. I believe that is in the record.

Trial Examiner: And Mr. Ellis was let go sometime in April, is that your recollection?

The Witness: Yes, that is my recollection.

Trial Examiner: I believe that was your testimony.

Were any others let go as late as April or May, that you know of?

The Witness: Yes, Mr. Neville left in April. The junior clerk left sometime in April, as I recall.

Trial Examiner: Any who left later than that?

The Witness: You will note that there is a footnote under "Engineers" here—no, that's right, that engineer was not released.

No, let's see. One of the engineer trainees was kept until the end of school, which would have been just about the

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beginning of June.

Trial Examiner: Yes. Well, we don't have to cover each one of these blocks, but generally speaking, the terminations extended from January 1 right on up through April?

The Witness: Right.

The Trial Examiner: And perhaps later?

The Witness: Yes. These terminations followed a general staffing plan where, as we got to know the jobs and the people, and we were able to assess how they could be done, this I am speaking primarily for the plant, these terminations were made.

Q. (By Mr. Avedon) But a number of the people who were terminated were taken on the Union Texas payroll, and then kept on the payroll for a period of time, and then subsequently terminated, isn't that correct? A. Yes, sir.

Q. In other words, they weren't lopped off at the time when Union Texas took over the various functions? A. I would say outside of those few at the plant, that eighty per cent of the others were lopped off at the time of January 1 or with notice very shortly thereafter. * * *

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How many people from the other Union Texas plants are now working at Winnie? Let's see if I can get it that way. A. Yes. I would have to refer to my notes on that but I believe it's—hourly people?

Q. Hourly people. A. Twenty-two.

Q. Twenty-two. How many hourly people are working at Winnie, not counting your shift foreman? * * *

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A. At the plant and four at the terminal, thirty-seven, making thirty-seven. * * *

Q. Of this thirty-seven hourly how many are transferees from other Union Texas plants? A. Approximately twenty-two.

Q. Twenty-two. Including the four at the terminal, too? A. Yes.

Trial Examiner: How many are entirely new employees?

The Witness: None.

Trial Examiner: Do you know what my question meant, that is, neither former Texas Gas Corporation nor transferees from other plants.

The Witness: That's right.

Trial Examiner: None?

The Witness: There are no—we have hired no one for the staffing of the Winnie plant from the outside at this

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point.

Trial Examiner: At any point from February 14 to date?

The Witness: Yes, sir.

Trial Examiner: At no time?

The Witness: At no time.

Trial Examiner: And these figures do not include the maintenance people?

The Witness: That's right.

Q. (By Mr. Avedon) Now, on January 1, at the fourteen plants, you say, there were two hundred-fifteen plus how many more? A. I used a figure of approximately twenty, twenty-two, as the number of transferees to the Winnie plant. If we are going to get, try to define approximate numbers, why, it should be 215 plus 22, two hundred thirty-seven.

Q. You did not give Mr. Quinn a copy of the operating agreement? A. No, I did not.

Q. He never actually saw the entire operating agreement? A. He was in Mr. Pierce's office when we discussed the thing, and I believe he saw the entire agreement.

Trial Examiner: On what do you base your belief? Did you see him holding it, reading it?

The Witness: Yes, yes, I did.

Q. (By Mr. Avedon) He read the entire agreement?

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A. I saw him reading it. I can't say he read the entire agreement.

Q. Were reports submitted to you on the production coming out of this plant between January 1 and February

14? A. I don't believe so, no. In other words, I was not watching the production of the plant.

Q. Do you know if reports were submitted to anybody with Union Texas on the production? A. Not to my knowledge. * * *

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Trial Examiner: Well, these reports did, of course, get to the proper source in the Union Texas Petroleum organization, they went through channels to the top; certainly the company knew what was going on.

The Witness: In that the product was being marketed, yes, sir.

Trial Examiner: Yes. And how much it was and the prices and the profitability and all those factors.

The Witness: This is a marketing function. In my operating responsibility, I don't, especially under the circumstances, I didn't know how that was being conducted during that period.

Q. (By Mr. Avedon) And during this same period, payroll data was being submitted, wasn't it, to Union Texas, since they were to reimburse— A. Once again this was being done in Houston.

Q. You don't know? A. And I was not reviewing the payroll.

Q. Now, the first time you were advised that Union Texas was going to take over the plant was on February 14 or February 13? A. 13.

Q. And that was by Mr. Marshall?

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A. That's right. I was present when the decision was made to shut the plant down.

Q. And the decision was to shut the plant down? What did Mr. Marshall tell you? Lets put it that way. A. Mr. Marshall told me that I was going to go to the Winnie plant, that the letter which had been prepared or was to be prepared, would be delivered to Mr. Gladden at approximately 8:00 a.m. the morning of February 14, and that I was to go to the Winnie plant to deliver to Mr. Neville the letter and tell him that we were terminating the operating agreement, and that I was to request that he shut the plant down in the manner I described.

Would you like for me to describe that again?

Q. Yes, please. A. All right.

That I was addressing, I was to address Mr. Neville as the ranking representative of Texas Gas Corporation at the Winnie plant, that my sole request was that he shut the plant down by the termination of the daylight shift, which was to be determined as approximately 4:00 p.m., that he was to maintain the operation of the pipe line facilities, and that the loading function was to continue.

Q. Now, you arrived at Winnie on February 14? A. Yes. Actually I was in Winnie the evening before, stayed at the Hub Motel.

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Q. Did you carry any written instructions to Mr. Neville? A. Only the letter showing the termination of the operating agreement, a copy of that which was to be delivered to Mr. Gladden. * * *

Q. Who decided or who gave the information to leave the lines full? A. Mr. Neville.

Q. Did he inquire of you how you wanted the plant shut down?

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A. In a general way, he said "We are going to do this." That was about it.

Q. Well, didn't he ask you if you want the plant permanently shut down or on a temporary shutdown basis? A. Let me emphasize one point. That after I made this statement to Mr. Neville, I then told him that all statements that I would make thereafter would be strictly of an advisory nature, and that how he did the shutdown of the plant was his business, and on these other details, he did say "We are going to do this."

"O. K. O. K."

Q. And you said "O. K."?

Did you say "No" to any of the suggestions that he made? A. Not to my knowledge.

Q. Not to your knowledge.

But didn't he check with you and ask you, "Do you want the pressure left in the vessels"? A. He probably said "We are going to leave the pressure in the vessels."

Q. Well, didn't he ask you if you wanted the pressure left in the vessels? A. No. He may have asked Mr. Woolfolk. He did not ask me. * * *

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Who gave instructions that no telephone calls were to be permitted in or out of the plant? A. I did.

Q. You did. Why was that done? A. At a time like this, there is liable to be all kinds of excitement, commotion, false information, escaping from the plant.

And I also felt that we were going to be swarmed with peddlers, salesmen, newspaper reporters, and everyone else. And I wanted to be absolutely sure that the correct story was given out of the plant.

And for this reason I asked that the communications be cut off. There would have been a chaos of people swarming to the phone, otherwise, anyway.

Q. Who gave instructions that the employees were not to be permitted to get their personal belongings? A. I did.

Q. Why did you do that? A. If you will recall, guards were placed on the plant. This was due to the fact that there were going to be a minimum number of people in the plant, there were going to very shortly be contractor's people coming into the plant, and I gave the blanket instructions to the guards that no one was to be permitted in the plant, and that instructions was to stand.

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Trial Examiner: Well, who had the responsibility?

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The Witness: Mr. Neville had the responsibility.

Trial Examiner: Well, if he didn't know what to do, he had to look to a superior. * * *

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The Witness: Well, Mr. Neville had the responsibility for bringing the plant to the condition which I stipulated, which was with the pipe line facilities, whatever that might be necessary for the operation of the pipe line, to be kept

running, and this, of course, meant that the boilers had to be kept running to supply the jacket water to the compressors for the pipe line operation.

The loading rack operation had to be kept running.

How he did that was his business, and I left it that way.

Trial Examiner: Yes.

Well, there is an area of doubt in my mind, I don't know how important it would be, but there are important decisions to be made there how a plant is to be shut down, to what extent. It might involve large sums of money the way the plant was shut down.

You have a director of the technical operations of the company and over him there is yourself, who is also a chemical engineer.

Isn't that a matter for technical decision, for professional judgment?

The Witness: Mr. Trial Examiner, you will have to

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remember that this was a completely integrated operating organization at the Winnie plant. Actually, Mr. Neidert was on the payroll as technical expert at the Winnie plant for Texas Gas Corporation.

They were fully capable of coping with any such situation that might arise.

And all that was necessary was for me to give them this directive and they could proceed from there.

Trial Examiner: In other words, you are saying that Mr. Neville had Mr. Neidert to—

The Witness: Yes.

Trial Examiner: —consult with?

The Witness: Yes.

Trial Examiner: And he might have had orders from Mr. Neidert?

The Witness: He—the organization was the other way around. Mr. Neville was the senior man present. Mr. Neidert, a member of the Texas Gas Corporation organization at that time, was on the staff at the Winnie plant in an engineering staff capacity. And he could render any technical assistance, such as he mentioned, observing the shutdown of the catalytic reformer.

You see, he was in there rendering technical assistance. This was a complete operating organization that existed at the Winnie plant.

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Mr. Avedon: Are you finished?

Trial Examiner: Yes.

Q. (By Mr. Avedon) Wasn't the question asked of you, "Do you want this plant put in a completely non-operative state, including the draining of lines and depressurization of vessels"? A. Not to my knowledge. This would have been impossible by 4:00 p. m.

Q. Now, whose decision was it to order the thirty-five other employees from other Union Texas facilities to come to Winnie? A. It was my decision.

Q. When was that decision made? A. The day of the 14th.

Q. The day of the 14th? A. Yes, sir.

Q. And the intent was to bring them in to operate the plant, is that correct? A. No, the intent was to bring them in to do whatever was necessary to bring the plant from the condition in which we found it to the state of shutdown which we desired, and at that time we did not even know for sure where we were going with the state of the shutdown.

These men were in there to fight fires, they were in there to drain—if you will remember, this was wintertime,

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and we had the whole system full of steam condensate, and a freeze-up at that time would have done a hundred thousand dollars worth of damage in the condensate return system. These men were to drain the steam system or anything else that was necessary while maintaining the delivery of gas to our pipe line customers.

Q. At these other locations are refineries operated? A. No.

Q. Why did you not use the trained people from Texas Gas to perform this function? A. These functions that I described are identical to the functions that we have in all of our existing plants. The draining of a steam system is a steam system in Montana—in fact, its rougher in Montana than it is here, and actually people from the northern plants had more experience with this. The draining of a hydrocarbon system is the same thing.

Q. Why would you bring people in there from other parts of the country, other states, when this work could have been done by the Texas Gas employees? A. You will recall that I had originally planned to staff this plant completely from the down condition. We were to take the plant in a down, cold condition. And I had orig-

inally planned to bring my people in as we do any new plant, which we acquire. We bring in our own personnel from

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our other operations. We have done this on an almost annual basis with at least one plant per year for the last ten years. And we bring in our own personnel and staff that plant.

It was my original plan to bring these people in and staff that plant in an identical manner to the manner in which we staff all new plants.

Q. As an operating plant, isnt that correct? A. Well, yes.

Q. When you say staff, you mean to staff a plant to operate it? A. That's right, to staff a plant to bring it into operation, that's right.

Q. All right. A. But this was not my plan at this time. In other words, I had no orders to bring the plant back on.

Q. That was left to your discretion? A. No, no, I had no orders to bring the plant on. I had orders to shut the plant down and to report back when the shutdown was complete.

Q. And not operate the plant? A. No.

Q. And yet you brought thirty-five people in— A. Yes.

Q. —to shut this plant down?

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A. Yes.

Q. Now, these thirty-five people, were they regular employees of Union Texas? A. Yes, sir.

Q. And they operated in a regular fashion in the other plants? A. Yes, sir.

Q. And could you spare thirty-five people— A. Yes.

Q. —to be brought to Winnie? A. Yes, I could.

Q. Do you normally keep your plants that overstaffed?

A. No, we don't. Actually we were in an unusual situation. As I mentioned, we have staffed at least one plant per year for the last ten years.

We had, with the completion of the Sligo project, no new construction in the plant, in our gasoline plant program.

We actually carried a lead or a backlog of personnel that we are bringing up for the next plant operation.

As a result of this, plus the fact that there were plans afoot to staff the Geismar project, we contemplated a plant on the Natural Gas Pipe Line of America—I am sorry, we had contemplated another plant in the North Central United States, which would have required a large staff. This deal has not gone through. And as a result, we were overstaffed at the

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time.

And it was no particular burden to provide thirty-five men.

Q. Didn't you state in your direct testimony that at the time you were at the plant you had not determined how long a shutdown the plant—for how long a period the plant would be shut down? A. That's right.

Q. In other words, it could have been shut down a very short time or it could have been shut down a long time, depending on what you found there? A. And depending on what my orders were.

Q. Right.

Why were these employees who were brought in on Friday and Saturday sent back on Sunday? A. On Sunday I went to Houston, I think I have mentioned this in my direct testimony, on Sunday I went to Houston and a meeting was held with Mr. Ekholm and our management, and the decision was made to extend the shutdown, that we would then move in—the engineering, I was told, had progressed to a point where there would be no point in trying to come on with any of the facilities until substantial work had been done.

We were far enough along with our Fluor Maintenance contract, we were far enough along with our engineering plans,

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to assume that the extra two weeks of trial and tribulation of trying to bring on any facilities from that point would not be justified, so we left the plant down until such time as we could bring Fluor in and get the program under way. * * *

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DR. WILLIAM C. FORD * * *

DIRECT EXAMINATION

Q. (By Mr. Sachse) Did I ask you to prepare the personal data to show your qualifications and training and experience, and his, in connection with this case, Dr. Ford?

A. Yes. * * *

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Mr. Avedon: I will stipulate to Dr. Ford's qualifications.

Mr. Sachse: Well, I am not content with just a stipulation to say he is qualified. I want the record to show how thoroughly qualified he is by his experience, and that is why I want it written into the record.

Trial Examiner: All right.

The reporter is so instructed to type into the record, and this is a little bit of a bonanza for the reporter, as if it were read by Dr. Ford, rather than as a documentary exhibit.

The Witness: Personal Data. William C. Ford, Ph.D. Age 54. Profession: Industrial Psychologist.

Education: Bachelor of Science - Chemistry and Mathematics Major; Master of Science - Psychology Major; Doctor of Philosophy - Psychology Major.

Work experience: 1935-1945, taught mathematics, Houston Public Schools, and served as Student Counselor.

1945-1948, taught Industrial Psychology, University of Houston, Veterans testing and Counseling for Vocational Selection and training, consultant to business and industrial managers on personnel selection and development.

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1948- Along with wife, Dr. Lulu Ford, founded the "Psychological Service Institute," offering personnel consulting services to managers and vocational counseling for individuals. In 1960 the Institute was incorporated. Now serving as President and Chairman of the Board of the organization, located at 1110 Lovett Boulevard, Houston 6, Texas.

Services offered by the Institute include:

1. Vocation counseling for individuals.
2. Psychological testing of employees and applicants for the purpose of selecting, placing and developing personnel according to their mental aptitudes and temperamental qualities, and adaptability to various types of work.
3. Personnel counseling, largely for "self understanding" and progress in developing one's natural talents and personal qualities in his work.
4. Educational programs: Teaching managers and supervisors basic information about human, mental and temperamental qualities and their relation to performance and adaptability in a work situation.
5. Advisory services: Advising managers in formulating personnel policies and administrative practices related to personnel.

Clients now number over one hundred fifty companies, including twenty large, medium and small-sized chemical

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companies; oil and related companies; financial institutions; insurance companies; and commercial companies.

Tests have been administered to over 150,000 employees and applicants over this period of time. The continuous contact relationship with the companies has afforded an opportunity to follow up and observe the performance and growth of thousands of people in their work over a period of many years. This experience has also offered an opportunity to become more skillful in interpreting the test results in terms of expected performance, adaptability and

progress of people in this work. The performance and predictions agree in a huge majority of the cases, approximately eighty-five to ninety per cent.

The staff of the Institute now number five Ph.D.'s and four professional test technicians.

Q. (By Mr. Sachse) Now, who is Theodore R. Miller?

A. He is a young man who worked with us in the Psychological Service Institute.

Q. Did he work with you in connection with the examination of applicants for positions at the Winnie plant?

A. Yes. He actually went to three locations and administered the tests and brought them back to the office where they were scored and the results recorded.

Mr. Sachse: Now, I ask that the personal data concerning him also be read into, written into the record. * * *

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The Witness: Personal Data. Theodore R. Miller, M.Ed.

Education: Bachelor of Science, Secondary Education; Master of Education, Educational Administration; Present-writing doctoral dissertation for Doctorate Degree.

Work Experience: 1946-1955, taught Social Studies, Oakmont Public Schools, Oakmont, Pennsylvania, for four years, and later served as a principal of a junior high school and elementary school, concurrently, for five years. During this nine-year period, was in charge of psychological testing for the elementary and junior high schools grades of the school system. Administered approximately 35,000 tests of many types, including general intelligence, aptitude, personality scales, achievement, and interest records. Also scored or directed the scoring of these tests, compiled and

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interpreted the results and counseled students when necessary.

1955-61, served three years as a superintendent of the Materials Handling Department for a major chemical company, directing the activities of eighty-five to one hundred forty people. Also served as a traffic analyst for two years in the Research and Development Division of the Distribution and Development Section of the same company.

1962- Serving an internship at Psychological Service Institute, Houston, Texas; learning to administer, score and interpret psychological tests under the direction and guidance of Dr. Lulu Ford and Dr. William C. Ford. * * *

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Q. (By Mr. Sachse) Dr. Ford, were you requested by Union Texas to prepare and submit and administer tests to applicants for positions as operators or in the Operating Department of its Winnie, Texas, plant? A. Yes.

Q. Do you recall who it was in Union Texas who made this request of you? A. Mr. Sutherland.

Q. Did you agree to do it? A. Yes.

Q. What tests did you use, Dr. Ford? A. We used three tests. We used the Wonderlic Employment Test, which is a general knowledge and reasoning test—

Q. Now, at this point let me ask you if the document which I have marked R-58 is the Wonderlic test to which you refer? * * *

A. Yes. * * *

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Q. (By Mr. Sachse) Now, what was the purpose of that

test, sir, the Wonderlic test? A. This Wonderlic test, as I say, is a short survey of general knowledge and reasoning. It covers general abstract reasoning, simple arithmetic, the knowledge of words as used in communication, generally speaking.

Q. Is that the sort of test that you have administered to other people for staffing other plants? A. Oh, yes.

Q. Widely, sir, or just in a few cases?

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A. No, we probably have given somewhere close to two hundred thousand of them.

Trial Examiner: Any of the other plants of this respondent, other than the Winnie plant?

The Witness: No, none.

Trial Examiner: Have you done any others?

The Witness: Not for Union Texas, no.

Q. (By Mr. Sachse) Will you name some of the people for whom you have done such tests? A. Oh, in the chemical business or chemical type operations, of course, all of Dow Chemical's operations in the Gulf Coast, which includes Freeport, Louisiana, Dowell, Dow Industrial Services, Dow-Schlumberger, and a few others.

Monsanto, Rohm & Haas, Lubrizol, U.S. Rubber, Monochem, Borden, Foster, Grant, Jefferson Chemical.

Trial Examiner: I think that is enough.

A. Shall we go on? Q. (By Mr. Sachse) Now (you say you gave other tests. What other tests did you give, Doctor? A. The second one was a mechanical insight or mechanical reasoning or aptitude type of test.

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Trial Examiner: I think that is enough.

A. Shall we go on? Q. (By Mr. Sachse) Now (you say you gave other tests. What other tests did you give, Doctor? A. The second one was a mechanical insight or mechanical reasoning or aptitude type of test.

Q. Now, I have marked as R-59 a document which I have shown to General Counsel, and I now show it to you, and is this the manual mechanical tests to which you refer?

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Q. (By Mr. Sachse) Doctor, was this test given to all persons who applied for positions in the Operating Department of the Winnie plant? A. Yes, all people, all of the group that we were involved with took that particular test.

Q. What is the purpose of this test, Doctor?

Mr. Avedon: I have no objection.

A. It is a basic aptitude test, which is somewhat different from the original one, the Wonderlic test.

An aptitude is supposed to be a capacity to learn, and is not supposed to be influenced considerably by differences in experiences in learning.

Therefore, if you will notice that the mechanical gadgets involved in this particular test are not common machinery that you would be involved in in every-day equipment.

The purpose is to see if a person can look at a piece of equipment or some mechanical gadget, and reason how it functions without being familiar with it.

Otherwise, you will be measuring learned ability and not an aptitude to learn. And this is supposed to be measuring an aptitude to learn.

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Q. Doctor, is this test given widely by you? A. Yes.

Q. Is it given as widely as the Wonderlic test? A. Yes, we use it as one of the basic tests in the battery for process and metalworking type of crafts and trades.

Q. Now, within the extent of your knowledge and experience, which the record shows to be very broad, can you say whether these tests are generally used in American industry? A. The Wonderlic test is used extensively. I think even the employment, private employment agencies, administer it. Its pretty widely used. But there are five different forms of it. So you could re-test a person five times without giving him the identical test, but you would have identified difficulty of questions and types of questions in all five forms.

And the same thing is true of the mechanical aptitude, that, oh, most larger companies administer tests of that sort today.

Q. Doctor, in grading the tests, is this done subjectively, according to the grader, or is it done objectively, according to some mechanical process that will eliminate personal distinctions? A. No, they are done objectively. The tests are usually published or devised and copyrighted by an individual, usually a college professor, and he then publishes them

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through standard publishing houses, like California Test Bureau or the Psychological Corporation or Science Research, and they make them available to people who are supposed to be qualified to use them.

They also furnish a scoring key so that when the person who is taking the test has completed his responses in a definite period of time, then you lay the key alongside his answers and see if they correspond to the ones that are furnished along with the test.

If they do, then it's considered correct, and if they do not correspond, then they are considered incorrect.

Q. Doctor, do you give these tests at both union and non-union plants? A. Oh, yes.

Q. You say that there was a third test given. What test was that? A. That was the Humm, H-u-m-m, Wadsworth, W-a-d-s-w-o-r-t-h, Temperament Scale.

It is what most people would call a personality measure.

Q. Now, Doctor, you declined to give me a copy of that test. Would you please say why? A. Yes. Dr. Humm owns the instrument, and he licenses people to use it instead of selling it through the normal channels, as Wonderlic and Miller does with the mechanical insight.

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He requests that the person who is licensed to use it come to Los Angeles and study under him, because of its complexity, until they have convinced him that they are qualified to interpret the information intelligently and use it judiciously.

Then he licenses you to use the test, but he doesn't sell you the materials. And he has a legal agreement or we have a legal agreement with him that prohibits us from doing certain things with the test, one of which is teaching people what you are measuring with him, because it becomes common knowledge of everyone in general, and in the course it ceases to have a lot of its technical value.

So in order to maintain its validity as a measuring instrument, he does not allow us to hand it out like I did the Wonderlic.

Q. Doctor, you know that there were two groups of people, there were a number of people, and I dislike talking about groups of people, but I suppose I will have to

say there were two groups of people who were given these tests, that is former employees of Texas Gas Corporation, and employees from other plants of Union Texas Corporation, is that correct? A. Yes.

Q. Was there any difference in the manner in which you gave the tests to all of these applicants?

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A. No.

Q. Did you, yourself, give all the tests or did you give some and did Mr. Miller give some? A. Mr. Miller administered them all. I attended the session with him at Winnie, but he was in charge of the actual administering.

Q. Were they all administered in the manner in which your Psychological Institute regularly administers these tests? A. Yes.

Q. Now, have you been informed, do you know, that this third test, the one that you cannot make public, was disregarded by Union Texas with respect to the group who had formerly worked for Texas Gas Corporation? A. I only found that out the last day or two.

Trial Examiner: Do you know, Dr. Ford, in examining these employees, which were former employees of Texas Gas and which were transferees from other plants of Union Texas Corporation?

The Witness: Yes, because we tested them in groups.

Trial Examiner: I mean, you had that information before you as you tested each individual?

The Witness: Oh, no. Well, we—the way we did, I believe Ted Miller went to Abilene and tested a group of the present employees in Texas, or Union Texas, and he went to Lafayette and tested a group over there, I believe, and

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then he went to Winnie, and I went with him on that trip, and he administered the tests to another group.

Trial Examiner: But only with relation to employment at the Winnie plant?

The Witness: Yeah.

Q. (By Mr. Sachse) Now, this is why I asked you, sir, at the beginning, whether the approval or disapproval as the result of the tests was in any way a subjective matter with the examiner or whether it was an objective matter, according to a key supplied with the test. A. No, it was strictly objective. In other words, that is what you are trying to do with the test is to get a standardized yardstick given under standardized conditions, with standardized explanations as to how they are going to go about taking the test, the nature of it, how they are to mark their responses. The scoring is all done strictly objective, and that is one of the major advantages of that type of test.

Q. Now, when the report was made by you—was a report made by you to Union Texas? A. Yes.

Q. And when the report was made by you, did you satisfy yourself that the grading had been properly, fairly, and impartially done? A. Yes, I checked every one of them.

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(The documents above-referred to, heretofore marked Respondent's Exhibits Nos. 60 and 61, were received in evidence.) * * *

Q. (By Mr. Sachse) Did Mr. Sutherland explain to you what

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his purpose was in requesting your service in helping him screen people for staffing the Winnie plant? A. Yes, that preceded the original letter there, I think, of March 14, which was some few days before.

He came and explained that they were getting ready to staff this plant, and that they were in the process of upgrading the equipment, and that they had some projected plans related to petrochemical production, and since we had had a great deal of experience in working with the management in other companies in the petrochemical field, if we could give them any assistance, then, or share knowledge with them as to what we had been able to learn from experience along this line, and I pointed out to him that we had had a great deal of experience and early in our operation, as a separate business, after we left the University, that we had done a research project to try to determine what were the minimum mental qualifications for people to be able to master the knowledge and skills involved in a process industry-type of operation and maintenance work, and that we had arrived at the standards as I outlined there.

The way we did that, if I might take a second or two, we asked the supervisors, and at least two who were familiar with them, to furnish us the names of a group of operators who were or who had shown a lack of mental capabilities of learning the information and skills involved, and that had

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to be supervised very closely because of a lack of ability to exercise proper judgment, and so forth, and another

group who they would consider satisfactory in their mental performance of their work, and another group that were noticeably more capable than the average operator or craftsman.

And we administered a number of tests, more than these three involved here, but the other two or three did not give us any discriminative records so we discarded them. These three did.

The group that seemed to be inadequate in ability, their score on the Wonderlic ranged from 3 to about 15. On the mechanical aptitude they ranged from, I think, around 0 or 1 or 2 up to a maximum of about 16 or 17.

Your satisfactory group ranged from 16, as a minimum, on up to about 26 or -7 on the Wonderlic, and from about 17 or 18 on the mechanical aptitude on up to the high 20's. I believe 28 was probably the highest score of that group.

And your group that showed noticeable capabilities scored above 20, I believe, on the Wonderlic, and ranged on up to 35 or -6.

And on the mechanical aptitude they scored from about 21 to 35, which was a perfect score.

So we felt justified, then, in taking a score of less than 16 on the Wonderlic as being a minimum score, as far

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as general knowledge and reasoning ability, and a score of 20 on the mechanical aptitude as being a minimum score, hoping that they will be higher, but at least that being the minimum score.

Trial Examiner: Mr. Sachse, do we need all this detail of what is behind these results, all the factors that enter into the judgments?

We have an expert witness here. We can go on and on and on with this.

Mr. Sachse: No. I have two more questions.

Q. (By Mr. Sachse) You were satisfied, then, that the tests you gave were suitable and proper for the purposes presented to you by Mr. Sutherland? A. Yes.

Q. Now, did you know which if any of the applicants taking these tests were union men and which, if any, were non-union men? A. No, that was not our concern, at all.
* * *

CROSS EXAMINATION

Q. (By Mr. Avedon) Mr. Ford, did you give the same tests to the supervisors as far as shift foremen went at the plant? A. At the Winnie plant?

Q. The Winnie plant.

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A. I dont think so.

Q. You don't think so. A. Not to my knowledge.

Q. Not to your knowledge. Now, you said groups were selected at Abilene and— A. I believe there was three locations. I believe one was in North Central Texas there somewhere, and one in Louisiana and one in Winnie.

Q. Who told you to take the Abilene? A. Mr. Sutherland. He selected the groups. He told us the groups he wanted us to test, and we followed his wishes.

Q. Did you give tests to the employees employed at the pipe line operations? A. No, not that—I don't know

where they were employed. He just said he wanted us to test these groups of people.

Mr. Avedon: May we go off the record a minute?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Avedon: Will you read that?

Mr. Sachse: Yes. We agree, at the General Counsel's request, to stipulate that Dr. Ford was not requested to give these tests to the pipe line employees, but this stipulation is not to imply that they were not given the Wonderlic test by someone else.

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Mr. Avedon: I agree to that.

Trial Examiner: The stipulation is admitted. * * *

EXAMINATION

Q. (By Trial Examiner) Did you submit a written report to Union Texas Petroleum with the results shown for each of the employees tested? A. Yes.

Q. By name? A. Uh-huh. * * *

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Q. (By Trial Examiner) Do you know of any employees who were tested as to whom there were unfavorable results, who were not employed as a consequence of the tests? * * *

Mr. Sachse: May I ask the Trial Examiner to limit that question to these two tests? Because the third test, which Dr. Ford would not produce, was not utilized—was not accepted by Union Texas as a reason for rejecting any of the former Texas Gas employees.

Trial Examiner: Well, I simply asked him what he knows. He can testify to what he knows.

Mr. Sachse: Yes, that's right, but I would like it limited to—well, go ahead, sir.

A. In each case we had set the minimum scores on the two ability tests, and we made a statement in each case as to whether they did or did not meet the minimum requirements of each one that was tested.

Q. (By Trial Examiner) Yes, but my question, I think, went further. Do you know what the company did as a result thereof? A. No.

Q. You don't know in any case at all that an employee was

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not hired as a result of the report, your report on the tests given?

A. No. We merely furnished them with the information. * * *

The Witness: There is one question I would like to clear up, since I see he is actually reading the report, that when you, in these individual reports there, where you include not only ability tests, but also the personality test, see, then part of our service was to render a descriptive expected performance that a person with these mental and temperamental qualities would be expected to perform in this work, in this manner, in a descriptive fashion, which

that is what he is looking at now, and that includes the personality measurement as well as the mere test scores.

Mr. Sachse: You mean I am allowing someone to look at something that is confidential?

The Witness: It's not confidential, but if he looks at that, he will say, "Well, how did you get all of this out of two test scores?" Which you get a score of 16 and a score of 20 out of, you see. * * *

Q. (By Trial Examiner) Let me ask you one more question.

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Did you make anything directly or indirectly which would have the effect of a recommendation that certain individuals not be employed? A. Yes, if they did not meet—if they did not make a minimum score, then we say they do not meet the minimum standards as agreed upon before the testing was begun.

Q. And that was tantamount to your finding and recommendation that they not be employed? A. Yes.

Q. All right. I haven't read this document. A. We had agreed on minimum standards before we administered any of the tests, you see. Or they accepted our recommendations of minimum standards.

Q. And I think you testified that you knew, of course, in examining certain of these individuals whether they were former Texas Gas Corporation employees or existing employees of Union Texas Petroleum? For example, those that you tested out at Abilene. A. Yes, they were, I think we knew they were working in plants of Union Texas.

Q. As to those in Abilene, did you come up with any unfavorable findings and consequently make recommenda-

tions as to their employment? A. Yes, I think out of the thirty-five or -six, or whatever

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the number was, of the Union Texas employees in the other plants, that there was about twenty-one or -two of them that actually met the minimum requirements and about fifteen or sixteen, or fourteen, somewhere along in there, who we said did not meet the minimum requirements.

Q. Do you know of your own knowledge what the company did about those?

A. No, we have no way of knowing that. * * *

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Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Sachse: Now that we are on the record, we can clear up two things.

One, in connection with the proposed Exhibit 62, it is now stipulated that after the close of the hearing we will prepare and file as Exhibit 62 a list of the results of the Wonderlic test and the mechanical aptitude test, but not the

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comments resulting from the other test, which Dr. Ford has testified was confidential, and which we have informed the Trial Examiner was not applied in declining the application of any former employee of Texas Gas Corporation.

Trial Examiner: Is it so stipulated?

Mr. Avedon: With, of course, the right of the General Counsel to check into it, I mean, to review, to check into the authenticity or the correctness of the list. * * *

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Trial Examiner: Well, I will admit the stipulation of the General Counsel and the respondent, and the record notes the failure of the charging party to stipulate.

(Respondents Exhibit No. 62 was reserved.) * * *

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Mr. Sachse: Respondent's Exhibit 63-A, et seq. are

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interoffice memoranda from R. C. Herrington to shift foreman, or others, one is the shift foreman, or M. F. Kruger, which were referred to earlier in the testimony taken, and which we agreed to supply. * * *

(The document above-referred to, heretofore marked Respondent's Exhibits Nos. 63-A through 63-H, were received in evidence.) * * *

HAROLD G. TEVERBAUGH * * *

DIRECT EXAMINATION

Q. (By Mr. Sachse) Mr. Teverbaugh, will you please state your full name for the record?

A. Harold G. Teverbaugh. * * *

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Q. What is your position with Union Texas Petroleum, a Division of Allied Chemical Corporation? A. Senior Vice-President.

Q. How long have you held that position, sir? A. About two months.

Q. What was your position before then? A. Vice-President.

Q. How long had you held that position? A. Five years.

Q. I show you a document that I have marked R-64, and ask you what it is, sir. * * *

A. This is an extract from the minutes of the Board of Directors of Allied Chemical on the resolution to purchase the Texas Gas Corporation, certain assets of the Texas Gas Corporation.

Q. (By Mr. Sachse) Meeting of what date, Mr. Teverbaugh? A. It was a meeting on the date of December 20, 1962. * * *

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Q. (By Mr. Sachse) Mr. Teverbaugh, were you in on the policy decisions to acquire the Winnie plant? A. Yes, sir. * * *

Q. When the purchase agreement was made on December 5, 1962, can you state what the intention of Allied Chemical was as to whether the plant would be bought running or shut down? A. It was the plan at that time to buy the plant in a shutdown basis, and it was planned at that time to buy the plant as of midnight, December 31, 1962, on a shut-down basis.

Q. Are there written reports or memoranda of the com-

pany made in the early part of December demonstrating this intention? A. Yes, sir.

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Q. I show you a document dated December 4, 1962, called an interoffice memorandum, which I have marked R-66. * * *

Q. (By Mr. Sachse) And ask you whether this report was submitted to you. A. This report was—I received a copy of this report.

Q. All right, sir. Now, does this report have to do with the then plan with respect to when the plant would be shut down and when the plant would be again put into action? A. Yes, sir. * * *

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(The document above-referred to, heretofore marked Respondent's Exhibit No. 66, was received in evidence.)

Q. (By Mr. Sachse) Now, Mr. Teverbaugh, show us what on this report indicates the time when it was expected that Texas Gas would shut down the plant and when it was expected that Union Texas would take over the plant. A. There is a plant shutdown schedule attached to this letter of December 4, showing the plant shut down around the 28th of December, starting to be shut down, and the take-over of the plant in the shut down state on January 1, 1963, by Union Texas.

Q. Now, Mr. Teverbaugh, it's already in evidence that that plan was not carried out. Will you tell us why it was not carried out? A. About December 17 or 18, Mr. Ekholm came with us, and I

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believe he so testified. At that time we were starting to have a few qualms about the start-up of the plant, I mean, the taking over of the plant on the 1st in a shut down condition, because the engineering was not far enough along for us to move in to start the construction and modification work in the plant.

Mr. Ekholm came with us about this time, around the 17th or 18th, and confirmed this, that we couldn't possibly do the things we had planned to do right after January 1st.

It was at that time decided that we should probably try to keep the plant operating and to try to work out an operating agreement with Texas Gas Corporation.

I believe that Mr. Elliott this morning testified that he received this operating, first draft of this operating agreement, somewhere around the first week in December.

I believe he was in error inasmuch as we did not even prepare the first draft of an operating agreement until about the 18th or 19th of December.

Q. What problem did you have, sir, if any, with respect to the pipe line operation, Mr. Teverbaugh? A. With the pipe line operation, it is—it delivers gas to a number of industrial customers in the Beaumont area. According to our contracts of delivery, we had to make arrangements to be sure to continue the delivery of this gas to these consumers. Therefore, we could not shut down the

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gas transmission system to our gas customers.

Q. Did you have any problem concerning the delivery of gasoline to customers? A. Yes, sir.

Q. What was that, sir? A. We had contracts to deliver gasoline to customers. With the plant shut down, we would be unable to make these deliveries, and had not completed arrangements to obtain the gasoline necessary to supply our customers.

Q. Did you thereafter complete such arrangements? A. Yes, sir.

Q. With whom and about when, if you know? A. We finally completed the arrangements, I believe, with Mobil Oil Company, about the 26th or 27th of December, I believe is when that was.

Q. While the plant was shut down, was this the manner which you used to supply the gasoline to customers, that is, by purchase from Mobil? A. Yes, sir.

Q. Is it correct that you kept enough of the plant running even during what we call the shutdown period, that is, from February 14 to June 3, to keep your gas line running? A. Yes, sir, we had the plant completely shut down except for the compressor and the boiler for running the dehydration facilities, until we received a complaint from Pan American

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for delivering as to one of their customers, that there was a drop-out of liquids in the line, which was causing coking in their furnaces, and we were requested to immediately remove these liquids from the gas, and so we started operating one of the absorbers to recover some of the natural gasoline out of the gas, so they would not have this coking problem in the burners.

Q. About when was that, Mr. Teverbaugh? A. That was about February 24th or 5th when we received this demand from them.

Q. Were you involved in the decision or a party to the decision to terminate the operating agreement with Texas Gas on February 14, 1963? A. Yes, sir.

Q. And were you involved in the decision after it was terminated to keep the plant shut down? A. Yes, sir.

Q. And why did you keep the plant shut down? A. We had reached the point in our proposed program for the conversion of the Winnie plant that we could start construction work, remedial work and modification work toward the proposed actual remodeling or working on the Winnie plant, to make it into a petrochemical plant.

Q. Did you buy this plant for use primarily as a gasoline plant or for use primarily as a petrochemical plant?

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A. I think we have shown it was bought for the purpose of being used as a petrochemical plant. * * *

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Q. (By Mr. Sachse) After you shut the plant down on February 14, or rather after Texas Gas shut the plant down on February 14, 1963, when did Union Texas begin its activities to convert the plant to the petrochemical use?

A. They, to put it one way, they started immediately.

Q. Please explain that. A. The people moved into the plant, both engineers and other personnel, from Union Texas, to start an actual on-the-job check of how to proceed with the modifications.

Some of our people in the Engineering Department were unfamiliar with a number of the details.

They moved into the plant to start checking these places, for instance, for the placing of nozzles, places in which

modifications had to be made in the plant for the proposed remodeling of the plant. * * *

Q. (By Mr. Sachse) Mr. Teverbaugh, I asked you to have prepared a resume with respect to the hiring steps followed by Allied Chemical with respect to employees of Texas Gas, whose names are listed on Appendix "A" of the Complaint.

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Did you have such a resume prepared, sir? A. Yes, sir.
* * *

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Mr. Sachse: It is stipulated that the exhibit marked—67, wasn't it?

Trial Examiner: Yes.

Mr. Sachse: That it has under VIII, on Page 2, five applicants listed as having failed to pass employment tests among the thirty-two so listed, which are in error, the five being No. 4, Farris L. Bourque; No. 9, N. D. Cooper; No. 23, J. L. Lindsey; No. 26, Arnold O. Mitchell; No. 30, Van Norstrand—it's William Van Norstrand.

That these five should have been listed under IX on Page 3 because they did pass the two tests which were applied by the company, and the company will file, does file, in evidence, the personnel files of the five men concerned, in full. * * *

I further propose to stipulate that in the case of all five of these listed as failing the tests, under Paragraph VIII of Exhibit 67, they did, according to the individual reports from the Testing Bureau, fail the third test.

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Trial Examiner: Which is the Humm test?

Mr. Ladwig: Which is the Humm test.

And that the reason is given on the summaries which appear in the personnel file that failing the test was the reason for the disqualification.

Mr. Sachse: But that the summaries to which reference is made were added to the files after the jobs were given or refused, for preparation for this trial, and were not a part of the file at the time that jobs were awarded or refused.

Mr. Ladwig: I also propose to stipulate further that William Van Norstrand is a former member of the union committee.

Mr. Sachse: Would you say when?

Mr. Avedon: Can we go off the record while they are checking this?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Sachse: We have marked and have filed 68-A and 68-B concerning F. L. Bourque.

Trial Examiner: That is Respondent's Exhibits 68-A and 68-B, right?

(The documents above-referred to were marked Respondent's Exhibits Nos. 68-A and 68-B for identification.)

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Mr. Sachse: 69-A, J. L. Lindsey, and which is the current file, and we will have to supply 69-B, the old Texas Gas file, unless we find that it has already been introduced in evidence, as it may have been.

Trial Examiner: Well, therefore, 69-B is reserved as an exhibit for the submission of this file possibly after the close of the hearing.

Mr. Sachse: Right, sir.

(The document above-referred to was marked Respondent's Exhibit No. 69-A for identification and Respondent's Exhibit 69-B was reserved.)

Mr. Sachse: 70-A is A. O. Mitchell's current file and 70-B is reserved for the A. O. Mitchell Texas Gas file, to be supplied possible after the close of the hearing.

(The document above-referred to was marked Respondent's Exhibit No. 70-A and Respondent's Exhibit No. 70-B was reserved.)

Mr. Sachse: 71-A and 71-B for Mr. Van Norstrand are filed.

(The document above-referred to was marked Respondent's Exhibits Nos. 71-A and 71-B for identification.)

Mr. Sachse: And 72-A and 72-B for Mr. Norman D. Cooper are filed.

(The documents above-referred to was marked Respondent's Exhibits Nos. 72-A and 72-B for identification.)

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Trial Examiner: Are the proposed stipulations completed now?

Mr. Sachse: We think so, yes, sir.

Trial Examiner: All right.

Do the parties so stipulate?

Mr. Sachse: We do, sir.

Mr. Avedon: Yes, sir.

Mr. Ladwig: So stipulate.

Trial Examiner: The stipulation as stated in the record by Mr. Sachse and Mr. Ladwig, together with the personnel files marked for identification Respondent's Exhibits 68 through 72, are admitted in evidence. * * *

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EXAMINATION

Q. (By Trial Examiner) These Wonderlic tests given to Union Texas employees at other locations, did they result in unfavorable findings as to any of them, do you know?

A. I believe what we were talking about there was we require all employees that we hire to take the Wonderlic test.

Q. But these were just as to new hires, not to those who are already employed? A. This has been going on, I think, for the last three or four years, and some of those that we do have on our payrolls did not take a Wonderlic test.

Q. But those who were considered as applicants or transferees to the Winnie plant, even though they were existing employees, were given these tests? A. Were given these tests, yes, sir.

Q. Now, those who were given these tests, who were existing employees at other locations as to whom there were unfavorable findings as a result of these tests, were

they removed from the company's payroll? A. I do not believe that they have been, no, sir.

Q. Any of them— A. Some of them have, I think, but I cannot swear to this.

Q. Only some? A. Yes, sir.

Q. Most not?

A. Yes, sir.

Q. And perhaps all are still employees? A. Perhaps. I cannot say, since they would not be working in a petrochemical plant, they were kept there at the gasoline plant.

Q. Why was it necessary at all to give mental tests? A. The reason that they were given was that we had a number of employees, we had a number of the employees of Texas Gas. We wanted to offer the opportunity for these employees of ours and those of Texas Gas to be given an opportunity to apply for these jobs.

Q. Only as— A. There was only—we did not feel that we could give interviews. We reviewed this thing thoroughly, and how could we do it unbiased, and we felt that the tests, plus physical examinations, plus their work records previous to this time, would be used as the basis for selecting the employees for the plant.

Q. Then this was only pertaining to the Winnie plant— A. Yes, sir.

Q. —and if I understand you correctly, it was your decision that this was an objective basis to compare one group against another? A. Yes, sir, compare the whole group to see whether they should be moved to this plant. We felt that this was a fair

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manner—

Q. Well, did you answer my question in the affirmative, that this was principally a basis for deciding as between one class of employees coming from other locations of Union Texas and already on the payroll— A. Yes, sir.

Q. —and the employee complement of Texas Gas Corporation? A. Yes, sir.

Q. Because you had more people than you needed? A. Yes, sir.

Q. And as to those who were former Texas Gas Corporation employees, who disqualified under the tests, they were not employed, generally speaking? A. Yes, sir.

Q. But those who were applying from other plants of the company, who failed the tests, they continued their employment at these other locations? A. Yes, sir. * * *

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FURTHER CROSS EXAMINATION * * *

Q. (By Mr. Ladwig) Do you know whether or not the standard for passing the Wonderlic test is the same at this plant and other plants of Union Texas?

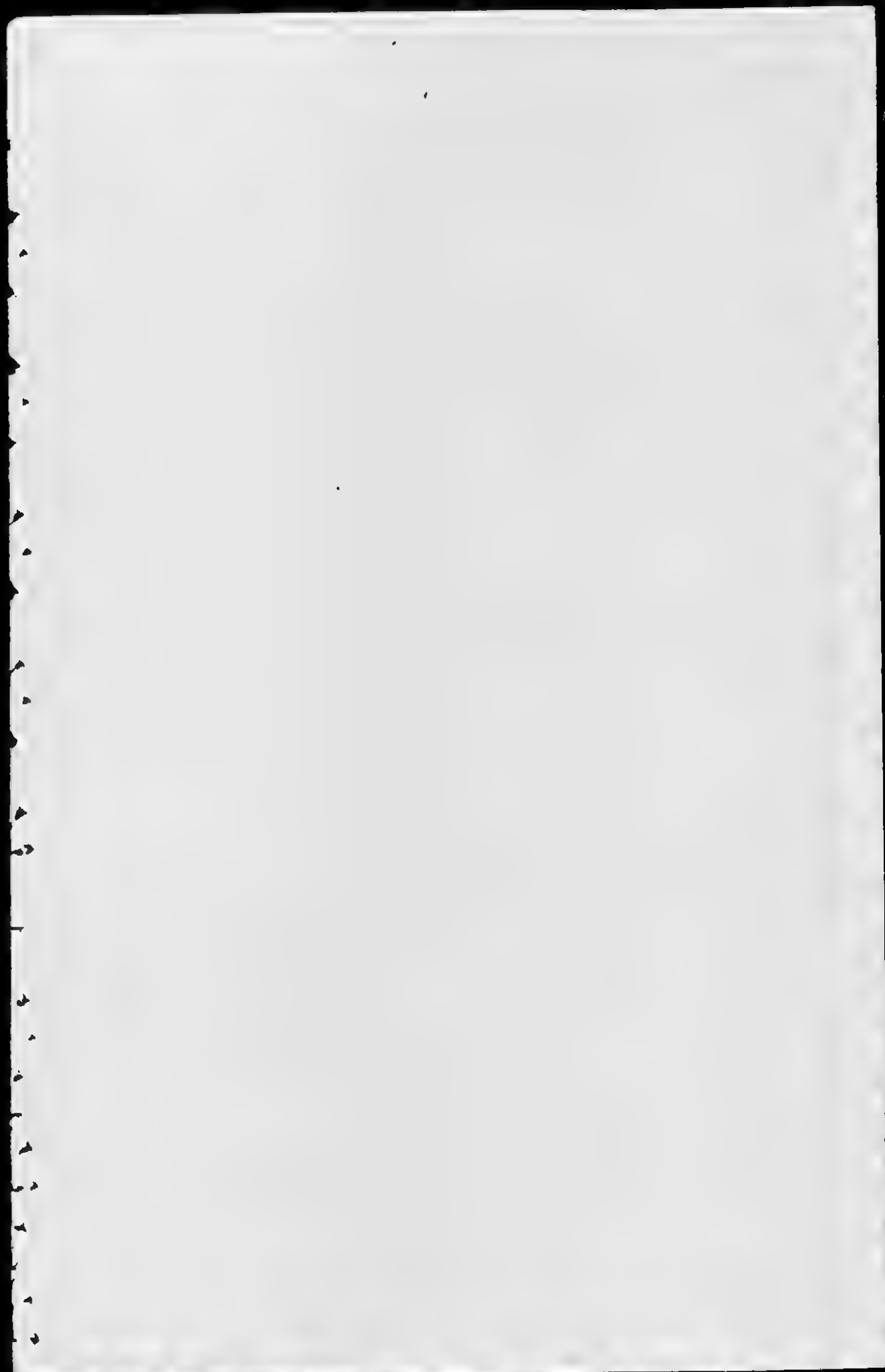
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A. It is my recollection that it is higher. When we hire an employee now, a new employee, the requirement for the Wonderlic test is higher than the one used in this test.

Q. Now, this is in a situation where you have not had the experience of knowing the qualifications of an employee to perform the work, that is, this is for new em-

ployees that have not worked on the facility before? A. We check the recommendation. This has been selected as a basis for hiring employees in the company, and we give this to all secretaries, any personnel that are hired.

Q. But you have already stated not to employees who have been on the payroll, say, for four years or more? A. I do not know at what time these were started, but I would say it was four to five years ago. * * *



JOINT APPENDIX
Volume II

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

NO. 19,692

FILED FEB 14 1966

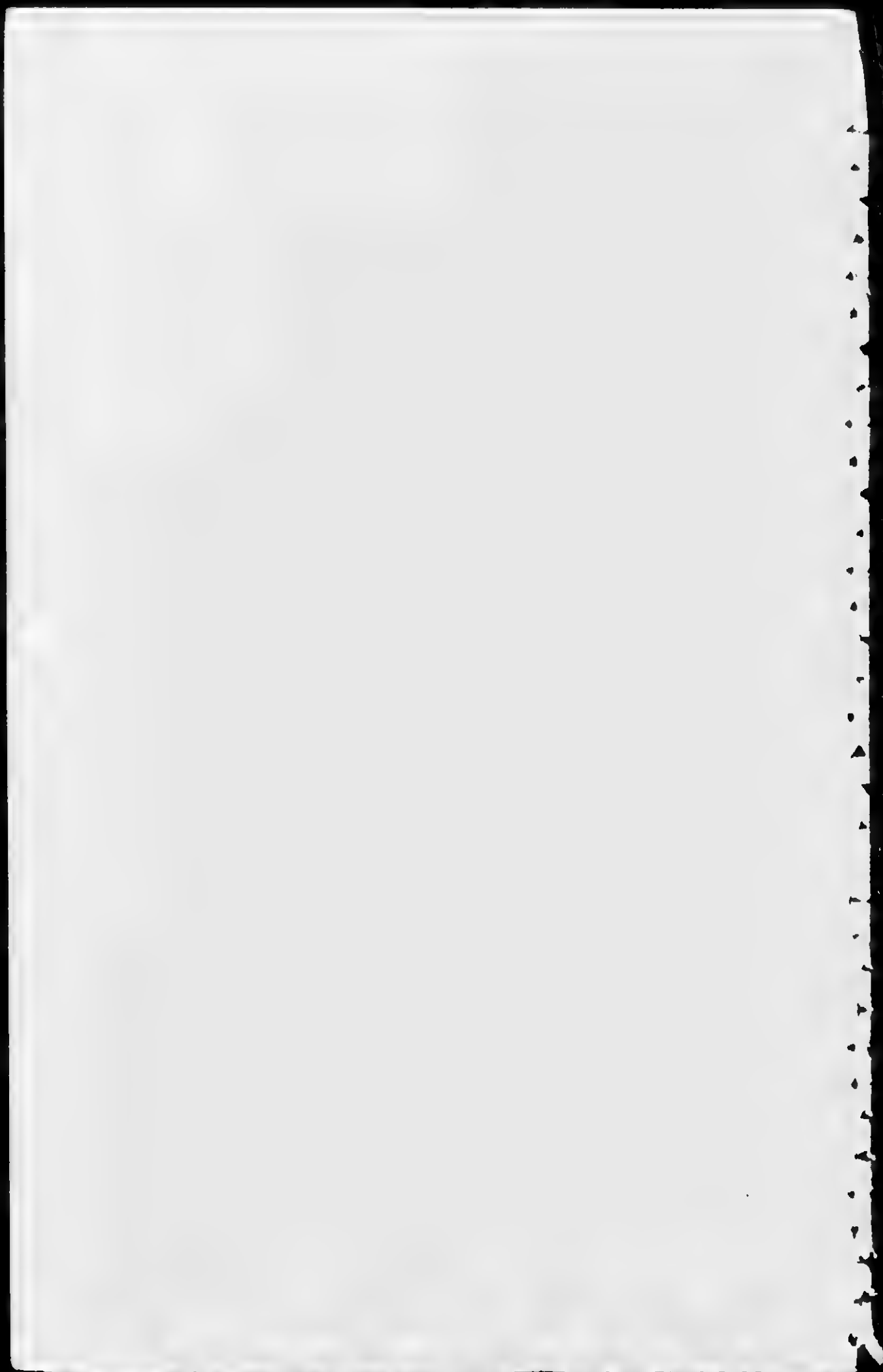
Nathan J. Paulson
CLERK

OIL, CHEMICAL AND ATOMIC WORKERS INTER-
NATIONAL UNION, LOCAL 4-243, AFL-CIO,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

On Petition to Review and Set Aside an Order of the
National Labor Relations Board



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GC ex. 1-A

* * *

CHARGE AGAINST EMPLOYER

* * *

Case No. 23-CA-1556

Date Filed 1-17-63

* * *

ATTACHMENT "B"

Basis of the Charge:

On or about January 11, 1963, and thereafter, Employer (1), herein called Union Texas:

* * *

(b) has, for purposes of undermining the Union, avoiding obligations under the collective bargaining agreement, and intimidating the employees in the bargaining unit into refraining from union activities, threatened to replace the employees with Union Texas employees from other States, thereby threatening to discriminately replace experienced union employees with nonunion out-of-state employees whenever they can be trained, in violation of Section 8(a) (1) and (5) of the Act.

* * *

GC ex. 1-E

COMPLAINT AND NOTICE OF HEARING

It having been charged by Oil, Chemical and Atomic Workers International Union, Local 4-243, AFL-CIO,

herein called the Union, that Union Texas Petroleum, a Division of Allied Chemical Corporation, herein called Respondent, has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Twenty-Third Region, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act, and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended:

1.

(a) The charge was filed on January 17, 1963, and served on the Respondent by mailing a true copy thereof to it, by registered United States mail, on January 18, 1963.

(b) The amended charge was filed on March 8, 1963, and served on the Respondent by mailing a true copy thereof to it by registered United States mail, on March 12, 1963.

2.

(a) Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of the laws of the State of New York, having its general offices at 61 Broadway, New York, New York and is engaged in the business of oil and gas exploration, development, processing and refining and petro-chemicals. In the operation

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of this business, the Respondent owns, operates and main-

tains facilities located in several states of the United States, including among others, facilities in Oklahoma, Louisiana and Texas. Respondent owns, operates and maintains a plant known as the Winnie Refinery, Winnie, Texas.

(b) During the past twelve-month period, a representative period, Respondent, in the course and conduct of its business operations, at its Texas facilities, manufactured, sold and shipped products from said facilities to points outside the State of Texas of a value in excess of \$50,000.

(c) During the past twelve-month period, a representative period, Respondent, in the course and conduct of its business operations at its Texas facilities, purchased and caused to be shipped from points outside the State of Texas to its facilities in Texas of a value in excess of \$50,000.

3.

Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

4.

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5.

All production, operating and maintenance employees at the plant at Winnie, Texas, and operating and maintenance employees at the dock site, Port Neches, Texas, excluding all plant protection employees, professional employees, maintenance pipefitters, their leadermen and their helpers, pipefitting welders, their leadermen and their helpers, main-

tenance electricians, their leadermen and their helpers, instrumentmen, their leadermen and their helpers, office and clerical employees, administrative and executive employees, confidential employees, foremen and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

6.

At all times since 1952, and continuing to date, the Union has been the representative for the purposes of collective bargaining of a majority of the employees, in the unit described above in paragraph 5, and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

7.

On or about February 14, 1963, the Respondent did discharge all the employees in the unit described above in paragraph 5, as listed in Appendix "A" attached hereto.

8.

On or about February 14, 1963, the Respondent did discharge and/or caused to be terminated, and at all times since has refused to employ the employees listed in Appendix "A" because they were members of or represented by the Union, and because they engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

5

9.

Commencing on or about January 1, 1963, and continuing to date, the Union has requested, and is requesting, the Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective bargaining representative of all the employees in the unit described above in paragraph 5.

10.

Commencing on or about January 11, 1963, and at all times thereafter, the Respondent did refuse, and continues to refuse, to bargain collectively with the Union as the exclusive collective bargaining representative of all the employees in the unit described above in paragraph 5.

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11.

Since on or about February 14, 1963, and continuing to date, the Respondent has refused to bargain with the Union by unilaterally effecting a partial shut down of the Winnie Refinery, and causing the termination of the employees listed in Appendix "A" without prior notice or consultation with the Union concerning the decision to shut down said plant.

12.

Since on or about February 14, 1963 and continuing to date, the Respondent has refused to bargain with the Union about the necessity of the partial shutdown, the assignment of work to employees listed in Appendix "A" during the partial shutdown, the recall rights of such

employees, and other matters concerning their wages, hours, working conditions, and the effects on such employees of the decision to shut down the Winnie Refinery.

13.

Since on or about February 20, 1963, and continuing to date, the Respondent has refused to bargain with the Union by unilaterally subcontracting maintenance work out of the bargaining unit described in paragraph 5 above, without prior notice to, or consultation with, the Union concerning the decision to subcontract said work.

14.

The acts of Respondent described above in paragraphs 7, 8, 10, 11, 12, and 13, and by each of said acts, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

15.

The acts of the Respondent described above in paragraphs 7 and 8 and each of said acts, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Sections 2(6) and (7) of the Act.

16.

The acts of the Respondent described above in paragraphs 10, 11, 12 and 13 and each of said acts constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Sections 2(6) and (7) of the Act.

17.

The acts of the Respondent described above in paragraphs 7, 8, 10, 11, 12, and 13 occurring in connection with the operations of Respondent described in paragraphs 2 and 3 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

18.

The acts of the Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a) (1), (3) and (5) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 3rd day of June, 1963, at 10:00 o'clock in the forenoon, (C.S.T.) in Hearing Room 7620, Federal Office Building, 515 Rusk Avenue, in the City of Houston, Texas, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days for the service thereof, and that unless it does so

all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Houston, Texas this 23rd day of April, 1963.

CLIFFORD W. POTTER
Clifford W. Potter,
Regional Director
National Labor Relations Board
Twenty-third Region
515 Rusk Avenue - Room 6617
Houston, Texas

* * *

1

GC ex. 1-G
ANSWER

NOW COMES UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, a corporation organized under the laws of the State of New York, by and through its attorneys, Breazeale, Sachse & Wilson, represented herein by Victor A. Sachse, a partner in said firm, and for answer to the complaint heretofore filed in this cause, says:

1.

Respondent admits the allegations of Paragraph 1 of said complaint.

2.

Respondent denies all allegations of Paragraph 2(a) of the complaint except to the extent hereinafter expressly

admitted. For further answer Respondent says that it is a corporation duly organized under and existing by virtue of the laws of the State of New York having its general offices at 61 Broadway, New York, New York and is engaged in the business of oil and gas exploration, development, processing and refining petro-chemicals and owns and operates and maintains facilities in several states, including among others Oklahoma, Louisiana and Texas and owns and maintains a plant known as the Winnie Refinery, Winnie, Texas.

For answer to Paragraph 2(b) and 2(c) of the complaint Respondent admits that it is engaged in interstate commerce.

3.

Respondent admits that it is engaged in interstate commerce and otherwise denies the allegations of Paragraph 3 of said complaint.

4.

Respondent admits the allegations of Paragraph 4 of said complaint.

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5.

Respondent denies the allegations of Paragraph 5 of said complaint.

6.

Respondent denies the allegations of Paragraph 6 of said complaint.

7.

Respondent denies the allegations of Paragraph 7 of said complaint.

8.

Respondent denies the allegations of Paragraph 8 of said complaint.

9

For answer to Paragraph 9 Respondent denies the same except as follows:

On January 1, 1963, the Oil, Chemical and Atomic Workers International Union, hereinafter called Union, addressed a letter to Respondent claiming that the purchase of property by Respondent from Texas Gas Corporation was subject to a collective bargaining agreement between the latter and the Union or, alternatively asking Respondent to sign with the Union an acknowledgment of said agreement or to negotiate a new one.

Respondent answered on January 11, 1963, advising the Union that Respondent had purchased only certain assets of Texas Gas Corporation, had no employees at the Winnie plant at the time as Texas Gas Corporation was operating the facility as an independent contractor and that there was no business to be discussed.

Following a telegram from the Union on February 14, 1963, the letter of January 11 was confirmed by a letter from Respondent to the Union on February 18, which concluded that the decision to close the plant in order to prepare it for the use for which it was purchased was not a matter of collective bargaining.

Prior to, during and after this correspondence and throughout the entire period of time from January 1, 1963, until sometime after February 14, 1963, the Union, pursuant to its collective bargaining agreement with Texas Gas Corporation, was actively engaged and did engage in collective bargaining with Texas Gas Corporation concerning wages, hours and working conditions of

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the employees listed in Exhibit A of said complaint including the terms and conditions of their termination.

10.

Respondent denies the allegations of Paragraph 10 of said complaint except to the extent shown in the answer to Paragraph 9.

11.

Respondent denies the allegations of Paragraph 11 of said complaint except to the extent shown in the answer to Paragraph 9 and except that on February 14, 1963 respondent terminated its contract with Texas Gas Corporation and the Winnie plant was closed.

12.

Respondent denies the allegations of Paragraph 12 of said complaint except as shown in its answer to Paragraph 9.

13.

Respondent denies the allegations of Paragraph 13 of said complaint except to admit that it has contracted for maintenance work without consultation with the Union.

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14.

Respondent denies the allegations of Paragraph 14 of said complaint.

15.

Respondent denies the allegations of Paragraph 15 of said complaint.

16.

Respondent denies the allegations of Paragraph 16 of said complaint.

17.

Respondent denies the allegations of Paragraph 17 of said complaint.

18.

Respondent denies the allegations of Paragraph 18 of said complaint.

Respondent prays that this be deemed a good and sufficient answer to the complaint and that the complaint be dismissed.

UNION TEXAS PETROLEUM,
a Division of Allied Chemical
Corporation

By: BREAZEALE, SACHSE
& WILSON

By: VICTOR A. SACHSE
Victor A. Sachse

* * *

GC ex. 2

EMPLOYEES OF TEXAS GAS CORPORATION
AS OF FEBRUARY 8, 1963

Hourly Paid - Winnie Plant, Winnie, Texas

Name	Classification	Hire Date
T. J. McCormick,	Plant Operator—	11-9-45
H. W. Keneson,	Relief Operator #2—	1-9-56
R. L. Bower,	1/C Process Operator A #1—	1-26-46
E. E. Golligan,	1/C Operator #2—	2-7-46
R. N. DeYoung,	Plant Operator—	2-13-46
E. I. Staggs,	Plant Operator—	10-14-46
O. R. Hampton,	Rackman—	8-6-57
D. E. Keenon,	Plant Operator—	1-9-57
M. Cummins, Jr.,	Relief Operator #1—	4-24-47
B. Shaver,	Boiler Fireman—	1-6-48
F. L. Bourque,	Compressor Operator—	8-12-48
J. L. Lindsey,	Plant Operator—	3-1-48
B. B. Majors,	1/C Process Operator #2—	3-11-48
E. E. Kahla,	Rackman—	1-28-52
W. M. Van Norstrand,	1/C Compressor Operator—	5-17-48
R. G. Walters,	Chief Tester—	8-16-48
M. Melancon,	1/C Process Operator B #1—	9-1-48
L. S. Whiddon,	Relief Operator #1—	9-8-48
W. C. DeYoung,	1/C Process Operator A #1—	9-13-48
C. W. Lowe,	Boiler Fireman—	9-27-48
G. R. Falke, Jr.,	1/C Process Operator A #1—	11-4-48
J. A. Freeman,	Utility Operator—	12-14-55
M. Shaver,	#1 Tester—	8-9-48
H. B. Briggs,	#1 Tester—	8-9-48
C. E. Satcher,	1/C Process Operator #2—	4-15-49

M. F. Henry, Boiler Fireman—4-25-49
 M. N. McAlpin, Jr., 1/C Process Operator #2—4-25-49
 A. Besch, Boiler Fireman—4-27-49
 A. W. Pendergrass, Senior Tester—6-15-49

2

R. M. Spencer, Jr., 1/C Process Operator A #1—9-4-51
 Y. D. Allen, 1/C Process Operator B #1—3-19-52
 A. T. Miles, 1/C Process Operator B #1—4-7-52
 J. D. Holt, #1 Tester—5-26-52
 W. W. Martin, 1/C Process Operator B #1—8-29-52
 E. B. Dressler, 1/C Compressor Operator—2-9-53
 F. H. Johnson, Relief Operator #2—5-26-53
 A. O. Mitchell, 3/C Process Operator #2—8-30-54
 J. W. Reynolds, 3/C Process Operator #2—7-27-53
 O. W. Little, Jr., Utility Operator—9-4-53
 E. A. Cryer, Jr., Rackman—1-5-59
 H. E. Keeler, Utility Operator—11-5-53
 B. W. Biddle, Rackman—5-21-56
 W. Bragg, 1/C Compressor Operator—3-17-54
 N. D. Cooper, Relief Operator #2—1-19-54
 J. R. Henry, Relief Operator #2—1-3-55
 J. R. Duhon, Senior Tester—1-28-52
 L. A. Stengler, Rackman—3-30-55
 J. B. Voss, 3/C Process Operator #2—9-20-60
 R. E. Wells, Jr., Rackman—12-20-55
 W. Bertrand, Jr., Relief Operator #2—1-9-56
 R. O. Mitchell, Rackman—12-19-55
 A. G. Lassiter, Rackman—2-19-57
 W. D. Taylor, Utility Operator—5-28-56
 A. F. Meck, Jr., Rackman—5-6-57
 H. H. Hodge, Jr., Instrument Leaderman—10-25-45

Gordon J. Trahan, Janitor—8-27-62
 W. H. Blaylock, Jr., Laborer—3-5-62
 R. A. Null, Machinist Leaderman—2-20-46
 R. J. Devillier, 1/C Machinist—1-9-47
 L. P. Crosby, 1/C Machinist—3-31-47
 J. F. Hoffpauir, Pipefitter Leaderman—8-23-48
 R. M. Conathy, Jr., Electrician Leaderman—9-9-48

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L. C. Durr, Pipefitter Leaderman—9-27-48
 H. P. Abshire, 3/C Process Operator #2—4-9-62
 Erasta Melancon, Utility—8-12-48
 D. R. Shivers, Pipefitter Lay-Out Man—10-4-48
 L. F. Rodgers, 1/C Electrician—10-17-60
 A. Breaux, Utility—8-12-48
 A. Borque, Utility—8-12-48
 Elmo Melancon, 1/C Machinist—8-12-48
 Ted W. Atwood, Laborer—7-11-62
 R. A. Ballard, 1/C Pipefitter—4-9-51
 Jim Bordeaux, Utility—6-20-51
 W. E. Meschke, Utility Leaderman—3-23-53
 H. E. Moffett, 3/C Process Operator #2—7-27-53
 D. A. Bruce, 1/C Instrument Man—10-19-53
 G. B. McAdams, 1/C Electrician—11-3-53
 J. E. Crawford, Laborer—2-1-54
 T. L. McClure, Utility—2-1-54
 T. J. Bernard, 1/C Pipefitter—3-31-55
 F. M. Turner, 1/C Pipefitter—6-14-54
 M. A. Cormier, 1/C Pipefitter—3-15-55
 L. B. DeSoto, 1/C Pipefitter—6-20-55

Hourly Paid - Port Neches Terminal, Port Neches, Texas

O. R. Shockley, Terminal Pumper—4-11-47
 I. D. Buckley, Terminal Pumper—7-21-48
 W. M. Goodnight, Terminal Pumper—4-28-49
 H. M. Jones, Terminal Pumper—7-26-48

Name	Classification
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Office Clerical - Winnie Plant, Winnie, Texas

Crockett, Mary J., Production Clerk
 Foreman, Lee F., Jr., Warehouse Clerk
 Kolb, Bobbie Joe, Sr., Warehouse Clerk
 Lachausse, Lynn, Jr., Clerk Typist
 Thames, Linda Kay, Clerk Typist

Supervisory Employees - Winnie Plant, Winnie, Texas

Albritton, C. C., Plant Superintendent
 Butler, G. T., Sr. Mechanical Engineer
 Cating, J. L., Opr. Safety & Pers. Dir.
 Chandler, E. W., Relief Foreman
 *Comer, B. L., Terminal Foreman
 Copeland, A. N., Warehouse Foreman
 Dallison, Kent, Technical Assistant
 Darney, R. D., Technical Assistant
 Duhon, F. R., Chief Clerk
 Ellis, J. C., Mtnc. & Construction Foreman
 Foreman, F. L., Shift Foreman
 Frazier, R. T., Laboratory Superintendent
 Hargraves, J. L., Relief Foreman
 Heathman, J. R., Shift Foreman
 Henry, Ben S., Mtnc. & Corrosion Engineer
 Kruger, M. F., Operations Superintendent
 Kunefke, R. W., Shift Foreman
 Neidert, W. B., Chief Engineer
 Neville, R. T., General Superintendent
 Sibert, J. M., Shift Foreman

*Supervisor - Port Neches Terminal

GC ex. 3

Name	Classification
Hourly Paid - Pipeline Department, Winnie, Texas	
J. W. Clefton,	1/C Compressor Operator
H. W. Curlee,	Gas Switcher
R. S. Hall,	Gas Switcher
S. Ledger,	1/C Compressor Operator
A. Morrison,	3/C Compressor Operator
R. M. Owens,	1/C Compressor Operator
R. A. Springer,	1/C Compressor Operator
L. J. Bertrand,	Roustabout
H. V. Bordeaux,	Light Equipment Operator
J. W. Brequx,	Light Equipment Operator
C. W. Cain,	Pusher
Joe L. Caruthers,	Roustabout
Mack Clary,	Roustabout
J. H. Commander,	Meter Inspector
C. J. Credeur,	Roustabout
Leroy Eubanks,	Gas Switcher
J. M. Griffin,	Roustabout
J. W. Hankemer,	Pusher
C. J. Harding,	Gas Switcher
C. A. Hargraves,	1/C Compressor Operator
Evan Hebert,	Roustabout
L. L. Lambert,	Inspector
E. L. LeBlanc,	Gas Switcher
C. R. Lindsey,	Meter Inspector
J. T. Rawlins,	Light Equipment Operator
D. L. Regan,	Gas Switcher
B. H. Renkema,	Roustabout
L. S. Shaw,	Roustabout

W. A. Smith, Gas Switcher
 J. N. White, Roustabout
 E. T. Williamson, Sub Foreman

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Name	Classification
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Office Clerical - Pipeline Department, Winnie, Texas

Foy N. Adcock, Clerk Dispatcher
 R. L. Burgess, Senior Clerk
 Adele Deeks, Secretary
 Richard I. Frank, Clerk Dispatcher
 Charles P. Kelley, Senior Clerk
 Charles L. Nicholson, Clerk Dispatcher
 Gaylen W. Troutman, Jr., Clerk Dispatcher

Supervisory Employees - Pipeline Department, Winnie,
 Texas

Clovis Bernard, Jr., Chief Engineer
 Jesse Bertrand, Operations Superintendent
 A. J. Brzozowski, Jr., Chief Clerk
 James D. Clements, Junior Engineer
 Marvin E. Dees, Sr., Maintenance Superintendent
 Dean A. Dickey, Field Foreman
 Donald G. Hall, Field Foreman
 William G. Hay, Asst. Field Foreman
 I. T. Henry, Field Foreman
 Thomas R. Holt, Field Foreman
 Jack J. Holter, Asst. Chief Clerk & Dispatcher
 W. E. Shettle, Jr., Pipeline Department Superintendent

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* * *

GC ex. 4

PURCHASE AGREEMENT

THIS AGREEMENT dated December 6, 1962, between TEXAS GAS CORPORATION, a Texas corporation, herein sometimes called "Texas Gas", and ALLIED CHEMICAL CORPORATION, a New York corporation, herein sometimes called "Purchaser", * * *

(b) Texas Gas is engaged in the business of:

(i) owning and operating a gasoline plant located on a tract of approximately 120 acres near Winnie, Texas, * * *

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Purchaser represents that it desires to purchase the physical facilities described in Paragraph II and to make modifications in said gasoline plant at Winnie, Texas, so as to cause said plant to be converted to a petro-chemical plant which will primarily supply a source of raw materials for the chemical industry, it being understood, however, that in making such purchase Purchaser will be required to assume the obligations and become entitled to the benefits of certain contracts hereinafter referred to which are incident to the operation of the properties to be

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acquired from Texas Gas hereunder. It is not Purchaser's desire or intention to purchase all of the assets of Texas

Gas or to carry on the existing business, as such, of said company.

THEREFORE, the parties hereto do hereby agree that;

II. CONVEYANCE OF CERTAIN ASSETS

Subject to the exceptions stated in Paragraph III and to the other terms and provisions of this Purchase Agreement, Texas Gas agrees to convey to Purchaser at the closing of the transactions herein contemplated (herein called "Closing") the following properties (herein called the "Properties"):

(a) all physical properties constituting Texas Gas' gasoline plant at Winnie, Texas, and deep-water terminal at Port Neches, Texas, including all component parts thereof, the realty upon which such plant, terminal, and adjoining houses, dock and storage facilities are situated and all machinery, equipment, material and supplies which are appurtenant to or are used or useful to the operation of said plant and terminal and appurtenant facilities, all as described in Exhibit A attached hereto and made a part hereof for all purposes;

(b) all physical properties constituting Texas Gas' transportation and gathering system, including all component parts thereof, the realty on which such pipelines and appurtenant facilities are located (including rights of way and easements), and all pipe, compressors, and appurtenant facilities, machinery, equipment, materials and supplies which constitute a portion of the physical facilities of said transportation and gathering

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system, all as described in Exhibit B attached hereto and made a part hereof for all purposes;

(c) all of the capital stock of and accounts receivable from Pipeline; * * *

III. EXCLUSIONS FROM PURCHASE AGREEMENT

There are excluded from the Properties, and from any

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conveyance or transfer made pursuant to the provisions hereof, the following properties of Texas Gas owned or claimed by it at Closing;

(a) cash on hand, in banks, and on deposit with third parties;

(b) accounts receivable, except accounts receivable from Pipeline;

(c) patents and patent rights other than those covered by any contract or contracts described in Exhibit E;

(d) trademarks and trade names;

(e) any and all employment contracts and other agreements relating to insurance, pensions, savings plans or other employee benefits;

(f) all prepaid expenses and deposits;

(g) any contracts, obligations or liabilities, actual or contingent, of Texas Gas arising out of the operation of its business except as specifically provided in this Agreement, including but not limited to all collective bargaining agreements or agreements with unions or employees relating to terms and conditions of employment. * * *

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VIII. ADDITIONAL COVENANTS OF TEXAS GAS

Texas Gas covenants with Purchaser that:

(a) at Closing, the Properties will be free of all liens and encumbrances of any nature whatever except the liens and encumbrances referred to in Paragraph VII(c);

(b) Texas Gas will furnish to Purchaser such information concerning the Properties, or any asset of Pipeline, or any matter which might affect any of them, as Purchaser reasonably may request, and Purchaser shall have the right to inspect the facilities and records of Texas Gas and Pipeline during business hours;

(c) Texas Gas will use its best efforts to obtain all such authorizations, approvals and consents by governmental authorities

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and others (including holders of rights of first refusal) which in the opinion of the counsel for Purchaser are material in character and may be required in connection with the conveyance and transfer, pursuant to the provisions hereof, of the Properties;

(d) Texas Gas will give its employees affected hereby due and proper notice of the sale contemplated hereby and the termination of their employment unless Texas Gas wishes to retain such employees in other capacities;

(e) Texas Gas will not, at or prior to Closing, take, or voluntarily permit any action to be taken, which would prevent it from performing its obligations hereunder; and

(f) Texas Gas will take all actions required of it hereby for the performance of its obligations hereunder.

IX. BURDEN OF LIABILITIES * * *

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Purchaser does not assume and shall not be liable for any liabilities or obligations of, or claims against, Texas Gas of any nature whatever other than those referred to above, and without limiting the foregoing, it is agreed that Purchaser shall not assume any of the following:

(1) Agreement between Local Union No. 4-243, Oil, Chemical and Atomic Workers International Union, AFL-CIO, and Texas Gas Corporation, effective from September 16, 1961, to March 16, 1963;

(2) Agreement between Local Union No. 195, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL, and Texas Gas Corporation dated February 6, 1962;

(3) Agreement between Local Union No. 479 of International Brotherhood of Electrical Workers and Texas Gas Corporation, effective from December 1, 1960, to December 1, 1962, as extended;

(4) any other agreements entered into prior to Closing with employee groups, labor unions or other bargaining units;

(5) any employment contracts and other agreements relating to employee benefits and plans;

(6) any income or other taxes assessed against Texas Gas or its respective stockholders or against Purchaser, if determined to be a transferee, by any Federal, State, local or other governmental agency having jurisdiction. * * *

XI. CONDITIONS TO OBLIGATIONS TO ALL PARTIES

The obligations of each party hereunder shall be conditioned upon:

(a) the occurrence at or prior to the Closing of each of the following transactions, in logical sequence:

(1) the conveyance and transfer of the Properties to Purchaser pursuant to the provisions of this Purchase Agreement; and

(2) the delivery to Texas Gas of the consideration referred to in Paragraph IV above;

(b) the securing, prior to Closing, of any permit, evidence of authority, consent, or permission required to be obtained or deemed by counsel for Purchaser to be desirable in connection with the transactions herein referred to from any governmental body or agency having jurisdiction, or from any other person, or the securing of reasonable assurances satisfactory to counsel for the parties that such required action will be taken;

(c) prior to Closing, there not having been enacted by the Congress of the United States any law, or there not having been issued or asserted by the Internal Revenue Service any ruling, opinion or claim, which would materially and detrimentally affect the tax consequences to any party hereto which result from the transactions provided for herein;

(d) There not having been enacted by the Congress of the United States prior to the Closing legislation, or there

not having been placed into effect rules and regulations by any administrative body of any State or the United States, which would materially and detrimentally affect the operation of the Properties by Purchaser or the transfer of said Properties to Purchaser;

(e) the Closing of the transactions referred to herein being consummated on or before December 31, 1962.

XII. ADDITIONAL CONDITIONS TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser hereunder shall be conditioned upon:

(a) compliance by Texas Gas with each of its covenants contained in this Purchase Agreement;

(b) all representations herein of Texas Gas being true as of Closing, with the same effect as though such representations had been made at Closing, and Texas Gas shall, upon request of Purchaser, or its counsel, execute and deliver to Purchaser at Closing a certificate to such effect;

(c) there being no material litigation or governmental proceedings pending or threatened against Texas Gas or Pipeline at Closing, whether or not disclosed to Purchaser, and there being no litigation pending or threatened at Closing which would prevent the orderly and complete consummation, in a manner satisfactory to the parties hereto, of the transactions contemplated by the Purchase Agreement (it being understood, however, that litigation referred to in Paragraph VII(e) shall not be considered material for the purpose of this Paragraph), and Texas Gas shall, upon request of Purchaser, or its counsel, execute and deliver to Purchaser at Closing a certificate to such effect;

(d) as of Closing, as to any and all of the Properties

(including any property of Pipeline) there having been no loss by fire or other casualty in an amount exceeding \$50,000 and there having been no substantial adverse change in the condition of the physical properties which are the subject hereof (including the properties of Pipeline) since September 30, 1962;

(e) the obtaining of an order of the Securities and Exchange Commission exempting Purchaser and every subsidiary company thereof as such from the provisions of the Public Utilities Holding Company Act of 1935 or Purchaser being satisfied that the transactions contemplated by this Purchase Agreement will not adversely affect the possibility of obtaining such order; all legal matters incident to the transactions contemplated by this Purchase Agreement being satisfactory to counsel for Purchaser, and such counsel having obtained from Texas Gas such certificates or other evidence of compliance with the conditions to Purchaser's obligations hereunder as such counsel reasonably may request;

(f) Purchaser having received from Messrs. Vinson, Elkins, Weems & Searls an opinion in scope and substance satisfactory to Purchaser as to:

(1) the title of Texas Gas to the Properties (and of Pipeline to its properties) immediately prior to the delivery of the documents of transfer and conveyance, which title shall be a good title free and clear of all liens, charges and encumbrances except as provided in Paragraph VII(c) and other that such liens, charges and encumbrances as shall be waived by Purchaser;

(2) except as such may be affected by the State-

ment of Intent to Dissolve filed with the Secretary of State pursuant

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to a Plan of Complete Liquidation and Dissolution adopted by Texas Gas, the due incorporation and corporate existence and good standing of Texas Gas and Pipeline in the respective States in which they are represented herein to be incorporated; and their respective corporate powers to own their properties and to carry on their businesses;

(3) the qualification and good standing of Pipeline as a foreign corporation under the laws of the State of Louisiana;

(4) the proper authorization, execution and delivery of the Purchase Agreement and other documents of transfer and conveyance to be delivered hereunder, and the legality, validity and enforceability thereof in accordance with their respective terms;

(5) the adequacy of the descriptions in the documents of transfer and conveyance of the Properties which are the subject hereof;

(6) the compliance of the form of the documents of transfer and conveyance to be delivered hereunder with applicable laws in each State in which any of the Properties are located, including all applicable recording laws;

(7) the necessity of obtaining any governmental authority or consent (including without limitation authority or consent under the Natural Gas Act and the Public Utility Holding Company Act), or any

consents and waivers by other persons or corporations to the transactions contemplated by this Purchase Agreement and, if in the opinion of said counsel any such authority, consents or waivers be necessary, that sufficient authority, consents or waivers have been obtained,

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or that requisite filings have been made with applicable governmental authority to obtain such authority, consents or waivers;

(8) such other matters incident to the transactions herein contemplated as Purchaser may request, including, without limiting the generality of the foregoing, the validity of the proposed transaction under the Sherman Act, Clayton Act, Federal Trade Commission Act, all as amended, or under any other laws whether similar or dissimilar.

It is understood that Messrs. Vinson, Elkins, Weems & Searls in preparing such opinion may rely, to the extent such firm deems proper, upon the opinions of counsel for Texas Gas and Pipeline as to the due authorization, execution and delivery of said documents of transfer and conveyance and may rely upon the opinions of other counsel acceptable to Purchaser as to the matters referred to in sub-paragraph (f) (7) above.

It is further understood that Messrs. Vinson, Elkins, Weems & Searls in preparing such opinion may rely, to the extent such firm deems proper, upon title opinions of other counsel acceptable to such firm and to Purchaser, or upon title policies, and on the opinions of counsel selected by such firm in the State of Louisiana as to:

(i) the legality, validity and enforceability of the documents of transfer and conveyance in the State of Louisiana; and

(ii) the compliance of the form of the documents with the applicable laws of Louisiana, including the applicable recording laws thereof.

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The nature and scope of the title examination by Messrs. Vinson, Elkins, Weems & Searls and the validity of the title to the Properties shall, in all respects, be satisfactory to Purchaser;

(g) Purchaser having received from counsel for Texas Gas and Pipeline an opinion in scope and substance satisfactory to it and to its counsel as to the matters referred to in Paragraph XII(f) (2), (3) and (4) hereof and as to such other matters incident to the transactions herein contemplated as Purchaser reasonably may request;

(h) Purchaser (to the extent it deems necessary) having obtained amendments to the indentures, mortgages and deeds of trust of Texas Gas which are listed in Exhibit E and which are being assumed by Purchaser, in form and substance satisfactory and appropriate to Purchaser and its counsel.

XIII. ADDITIONAL CONDITIONS TO OBLIGATIONS OF TEXAS GAS

The obligations of Texas Gas hereunder shall be conditioned upon compliance by Purchaser with each of its covenants contained in this Purchase Agreement, and upon all legal matters incident to the transactions contemplated

by the Purchase Agreement being satisfactory to counsel for Texas Gas.

XIV. WAIVER OF CONDITIONS

Any of the conditions contained in Paragraphs XI, XII, and XIII may be waived in whole or in part by the party hereto to whose obligations hereunder such conditions are applicable.

XV. INSTRUMENTS OF CONVEYANCE

Counsel for Purchaser shall prepare and submit to counsel for Texas Gas and Pipeline, reasonably in advance of Closing, such

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instruments of transfer and conveyance as, in the opinion of counsel for Purchaser, are required to complete the transfer and exchange of the Property. Such instruments shall contain covenants of general warranty as to the properties described in Exhibit A attached hereto and, as to the remainder of the Properties, warranties by Texas Gas against any party claiming by, through or under Texas Gas. Such covenants of warranty shall provide for full subrogation under warranties of title made by others, but shall not bind Texas Gas to covenants of general warranty other than as provided herein. * * *

XVII. CLOSING

The delivery of the documents necessary to effectuate the transfers and conveyance of the Properties and the payment to Texas Gas of the consideration specified herein shall occur at the principal office of Texas Gas in Houston, Texas, at 10:00 o'clock A.M., local time on December 31,

1962, or at such other time and place as shall be agreed to by the parties to this Purchase Agreement.

At Closing, Texas Gas shall deliver to Purchaser such of its books, papers and records which pertain to the Properties (including all books, records and papers of Pipeline) but Texas Gas

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shall continue to have reasonable access to the documents so delivered at Closing so long as the information contained therein is necessary to Texas Gas for the compilation of reports and other necessary data, or the continued operation by it of any part of its business. * * *

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XIX. NOTICES

Any notice or other document required or permitted to be given or delivered to any of the parties hereto shall be mailed first class postage prepaid to such party at its address set forth below, namely:

TEXAS GAS CORPORATION

Texas Gas Building
2472 Bolsover
Houston, Texas

Attention: Mr. A. C. Gladden, Executive Vice President

UNION TEXAS PETROLEUM, a Division
of Allied Chemical Corporation
Houston Club Building
Houston 2, Texas

Attention: Mr. J. Howard Marshall, President * * *

GC ex. 5

This Contract is entered into the 28th day of December, 1962, effective at 11:59 o'clock P.M., Central Standard Time, on December 31, 1962, hereinafter called the "Effective Date", between ALLIED CHEMICAL CORPORATION, a New York corporation, hereinafter called "Company", and TEXAS GAS CORPORATION, a Texas corporation, hereinafter called "Contractor", * * *

1. PURPOSE

Contractor is as of the Effective Date of this Agreement, selling to Company the Properties hereinafter defined.

It is understood that Company intends, as soon as necessary arrangements can be made, to close the plant and convert it to a petro-chemical plant which will primarily supply a source of raw materials for the chemical industry. In the interim, Contractor agrees to operate the Properties as an independent contractor, subject to the terms and conditions hereinafter set forth.

2. DEFINITION OF PROPERTIES

"Properties" as used herein shall be defined as:

2.1 All physical properties constituting the gasoline plant near Winnie, Texas, and deep water terminal at Port Neches, Texas, including all component parts thereof, the realty upon which such plant, terminal, and adjoining houses, dock and storage facilities are situated

and all machinery, equipment, material and supplies which

are appurtenant to or useful to the operation of said plant, and terminal and appurtenant facilities; and

2.2 All physical properties constituting the transportation and gathering systems of Company and Texas Gas Pipe Line Corporation, including all component parts thereof, the realty on which such pipelines and appurtenant facilities are located (including rights of way and easements) and all pipe, compressors, and appurtenant facilities, machinery, equipment, materials and supplies which constitute a portion of the physical facilities of said transportation and gathering systems;

the Properties defined above being a portion of the assets sold by Contractor to Company as of the Effective Date hereof.

3. SCOPE OF WORK

3.1 Contractor shall, as requested by Company by prior instructions, operate, maintain, repair and renovate the Properties, and perform such other work or services requested in writing by Company to operate and keep said Properties in a condition satisfactory to Company. Such work shall include but not be limited to routine operation and maintenance, emergency work, janitorial services, turn-around work, and other miscellaneous services for plant, pipeline and terminal operation and maintenance, and Contractor shall perform such supplemental services as equipment inspections as may be requested by Company from time to time.

3.2 Contractor shall supply all personnel required to properly perform the work hereunder, including supervisory, technical,

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skilled craftsmen, field office, and unskilled labor not in excess of the number now employed, except on written authority of Company.

3.3 At all times when work is in progress there shall be a Superintendent, Assistant Superintendent, or Supervisor on the plant facilities as a representative of Contractor. Notices given to Superintendent, Assistant Superintendent or Supervisor shall be considered to be given to Contractor.

3.4 When Company requests Contractor to perform work hereunder, other than that provided for in Section 3.1 above, Contractor shall plan the work to be done, which plans shall be subject to Company's approval prior to commencement of work. After Company has given written approval of such plans, Contractor shall have sole and complete control of means and methods used in accomplishing such work.

3.5 Contractor shall provide accounting for all services to be performed by Contractor hereunder and prepare the payroll for all of Contractor's personnel. Contractor shall keep and maintain accurate records of the actual cost of the work performed hereunder subject to reimbursement or fee as provided herein. All of Contractor's cost records of work performed hereunder shall be subject at any reasonable time to Company's inspection and audit.

3.6 Company shall furnish all equipment, apparatus, materials, expendable supplies, small tools, safety equipment, supplies, and minor and major items of construction equipment to be used in the performance of the work hereunder

other than (a) small tools and equipment which Contractor may acquire for Company's

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account at a cost not to exceed \$500.00 and (b) items needed in emergency situations which may be acquired for Company's account.

3.7 Company shall supply the facilities and equipment for field offices, shops, change houses, warehouses and general facilities for Contractor's personnel.

3.8 Nothing contained in this Section 3 or in any other portion of this Agreement shall require Contractor to do any act in violation of any contracts or agreements to which Contractor is now a party.

4. COMPENSATION

Company shall pay Contractor a monthly fee of Seven Thousand Five Hundred Dollars (\$7,500.00). In addition, Company shall reimburse Contractor for all direct labor cost, cost of supervisory and office personnel labor, insurance cost, cost of permits and inspections, general expenses, and any like costs incurred by Contractor in subcontracting jobs for its own account. To be reimbursable, any other cost incurred by the Contractor shall first be approved in writing by the Company. * * *

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6. RELATIONSHIP OF PARTIES

Contractor agrees to perform the work undertaken hereunder as an independent contractor, free of control or supervision of Company as to means and method of per-

forming the same, and Contractor further agrees that all persons engaged in the performance of said work shall be solely the servants and employees of Contractor. Company has contracted herein solely for the results of such work.

7. PERMITS, LAWS AND REGULATIONS

7.1 Contractor shall obtain and pay for all necessary permits required by Contractor and shall comply with all applicable laws, ordinances, rules and regulations of the federal, state, and local governments applicable to any part of the services or work to be performed hereunder. Contractor assumes full responsibility as employer for all employees of Contractor under applicable statutes and agrees to pay all employer taxes required thereunder.

7.2 Company shall obtain and pay for all necessary permits required by Company.

8. SAFETY

Contractor shall perform its services hereunder with respect to the Properties in a safe and prudent manner, insuring that its employees, subcontractors, agents and materialmen exercise conduct and precautions which are usual and customary in the industry at properties and facilities of this nature.

9. INDEMNIFICATION AND INSURANCE

9.1 Indemnification—Contractor shall, and does hereby, indemnify and hold Company harmless from any and all claims,

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liabilities and causes of action for whatever cause but

limited to the insurance coverage which Contractor now has in effect as evidenced by the Certificate of Insurance attached to this Agreement. Any and all liability in excess of such insurance coverage shall be borne by Company.

9.2 Insurance—Contractor agrees to continue in force and effect during the entire term of this Agreement the insurance coverage evidenced by the Certificates of Insurance attached hereto, and agrees to name Company as the insured under such policies for all risk and exposure in connection with Contractor's acts under this Agreement. * * *

10. SUBCONTRACTS

10.1 Contractor may not assign this Agreement nor subcontract the same or any part thereof, nor assign to any other person or persons all or any part of the remuneration due or which may become due to Contractor hereunder without the written consent of Company, and the assignment of this Contract or subletting of any work to be performed hereunder, if so permitted by Company, shall not relieve Contractor of its obligations hereunder. * * *

13. TERM

13.1 This contract shall become effective and shall remain in effect until April 1, 1963, unless earlier terminated by

either party on 15 days advance written notice. Contractor agrees that upon termination of this Agreement it will

terminate the employment of its employees affected hereby with due and proper notice thereof.

13.2 It is agreed that either party hereto may terminate this Agreement with respect to the transportation and gathering systems but neither party may terminate this Agreement as to any portion of the plant or terminal without terminating the Agreement in its entirety. * * *

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GC ex. 6

THIS AGREEMENT, made and entered into by and between TEXAS GAS CORPORATION, located at Winnie, Texas, hereinafter referred to as "Company," and OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, and its LOCAL UNION NO. 4-243, hereinafter referred to as "Union,"
* * *

ARTICLE I.

RECOGNITION * * *

Section 2. The Company agrees to recognize, during the life of this Agreement, the Union as sole bargaining agent with respect to rates of pay, wages, hours of employment and working conditions for all production, operating and maintenance employees of the Company at its plant at Winnie, Texas, and operating and maintenance employees at the dock site, Port Neches, Texas, excluding all plant protection employees, professional employees, maintenance pipefitters, their leadermen and their helpers, pipefitting welders, their leadermen and their helpers,

maintenance electricians, their leadermen and their helpers, instrumentmen, their leadermen and their helpers, office and clerical employees, administrative and executive employees, foreman, supervisory and confidential employees, as certified October 25, 1949, by the National Labor Relations Board in Case Nos. 39-RC-66 and 39-RC-69 (but specifically excluding therefrom all office and clerical employees), and as modified by certification by the National Labor Relations Board dated April 30, 1952, in Case No. 39-RC-378.

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ARTICLE II.

TERM OF AGREEMENT

Section 1. It is agreed that the Articles set forth herein, together with the Line of Promotion Chart and booklet of job duties which are expressly made a part hereof, shall constitute (subject to amendment in the manner provided in Section 2) the full and complete Agreement between the parties, and shall be in effect for a period of eighteen (18) months, namely from September 16, 1961, until March 16, 1963; and thereafter from year to year, subject to opening for amendment or subject to termination by either party on the expiration date or any anniversary date thereof. The party desiring amendment or termination shall serve a written notice on the other party at least sixty (60) days prior to said expiration date or any anniversary date thereof.

Section 2. This Agreement, or any article herein, may be modified or amended at any time by mutual consent of the Union and the Company; however, no change or

modification in any of the provisions hereof will be binding on either party until reduced to writing and signed by both parties.

Section 3. The question of a general wage increase or a general wage decrease may be once opened by either party during the term hereof by giving sixty (60) days' written notice of a desire to reopen to the other party, which written notice can be given only after the Union has reopened the general wage issue with any three (3) major oil companies in the Beaumont-Port Arthur Area, during which sixty (60) days notice period the issue of wages shall be negotiated upon. * * *

ARTICLE XXIX.

SEVERANCE PAY PLAN

Severance pay shall be paid to any full-time permanent employee of the Company whose job is terminated by the Company because of lack of work or who is laid off due to lack of work or who is released without cause by the Company.

Any employee who is released for cause, who voluntarily resigns or who does not return after a leave of absence will not be eligible for severance pay.

The severance pay will be based on the following schedule and will be paid on the permanent, straight-time rate of the employee at the time of termination and computed on the number of hours in the work week then in effect:

Over one (1) year, but less than
three (3) years:

2 weeks

Three (3) years, but less than five (5) years:	3 weeks
Five (5) years, but less than eight (8) years:	4 weeks
Eight (8) years, but less than ten (10) years:	5 weeks
Ten (10) years, but less than twelve (12) years:	6 weeks
Twelve (12) years and over:	8 weeks

Severance pay shall be computed for purposes of this section on the permanent, full-time service of the employee with the Company as reflected by the Company's records. * * *

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GC ex. 8

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION

International Representative

1415 Avenue F
Nederland, Texas

January 1, 1963

Union-Texas Petroleum,
a Division of Allied Chemical Company
811 Rusk
Houston, Texas

Gentlemen:

Monday, December 31, 1962 Plant Manager R. T. Neville, at your Winnie, Texas Plant, notified A. T. Miles, Chairman of the Workmen's Committee of Local 4-243

of the Oil, Chemical and Atomic Workers International Union, that the ownership of the gas plant was changing to your Company on January 1, 1963.

As you know, this Union is the exclusive collective bargaining representative of the employees in the following bargaining unit: all production, operating and maintenance employees of the Employer at its Plant at Winnie, Texas, and operating and maintenance employees at the dock site, Port Neches, Texas, excluding all plant protection employees, professional employees, maintenance pipefitters and their leadermen and their helpers, pipefitting welders, their leadermen and their helpers, maintenance electricians, their leadermen and their helpers, instrument men, their leadermen and their helpers, office and clerical employees, administrative and executive employees, foremen, supervisory and confidential employees.

On November 10, 1961 this Union executed the collective bargaining agreement with Texas Gas Corporation covering the wages, salaries and working conditions for the employees in the above-stated bargaining unit. The term of this agreement was from September 16, 1961 to March 16, 1963 and annually thereafter unless a specified notice was given. * * *

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In fact, we have alarming information from presumably reliable sources that your Company has made plans to discriminate against employees in the bargaining unit and to hire outsiders in order to undermine this Union as the exclusive collective bargaining representative of these employees. We hope that your Company will not do so and

that we can, instead, have an amicable relationship between your Company and the Union.

Toward this end, this Union hereby notifies you that the Union's position is that the Company purchased the business subject to the current collective bargaining agreement, and that this agreement is binding both upon your Company and the Union on all employees in the above-stated bargaining unit.

In any event, even if your Company were not legally bound by the terms of the current collective bargaining agreement, this Union hereby notifies you that this Union represents a large majority of the employees in the above-stated bargaining unit. The Union, therefore, requests that you meet with it immediately (this week, if possible) and either sign an acknowledgment that your Company and this Union are bound by the terms of the current bargaining agreement, or to negotiate a new agreement covering the employees in the stated bargaining unit. If there is any doubt that this Union does not represent a majority of the employees in the stated bargaining unit, this Union is prepared to prove its majority status by card check or otherwise.

Will you please notify this Union by calling the undersigned at RA 2-2908, Nederland, Texas, or by written notice to the undersigned at 1415 Avenue F, Nederland, Texas, when you are willing to meet and discuss this matter.

Yours very truly,

GEORGE W. COWART

George W. Cowart, Representative

GWC:bc

cc: Clifford W. Potter, Director NLRB

1

GC ex. 9

UNION TEXAS PETROLEUM

A Division of Allied Chemical Corporation

811 Rusk Avenue • Houston 2, Texas • Capitol 5-0111

DOUGLAS F. PIERCE

Director-Administration,
Petrochemicals

January 11, 1963

* * *

Mr. George W. Cowart, Representative
Oil, Chemical and Atomic Workers
International Union
1415 Avenue F
Nederland, Texas

Dear Mr. Cowart:

Your letter of January 1, 1963, addressed to Union Texas Petroleum, a Division of Allied Chemical Corporation, has been referred to me.

From a careful reading of your letter it seems obvious that you were prompted to write as a result of misinformation concerning the relationship of this company with Texas Gas Corporation.

First, let me say that this company did not "buy the business" of Texas Gas. Instead, it acquired only certain enumerated assets of Texas Gas Corporation. It will suffice to state that none of the collective bargaining agreements

to which Texas Gas Corporation may have been a party were assumed; nor was the purchase agreement between the parties made subject in any way to any such agreements.

Second, as you know, an antidiscrimination policy has long been practiced by this company—not only with respect to our employees and our employment policies, but in all aspects of our business. Please be assured that it intends to continue to adhere to such a policy and to exert every good faith effort to see that all its employees abide by it. The O.C.A.W. has long held bargaining rights in many of this company's plants and therefore is well acquainted with the existence of this long established policy.

Finally, this company has no employees working at the Winnie plant at the present time although at a later date it is planned to take maximum advantage of the utilization of our present employees in the final staffing of this facility. At present, Texas Gas Corporation is operating the facility for us in the capacity of an independent contractor, a fact of which we assumed you were well aware. In fact,

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it is our understanding that Texas Gas Corporation, as Contractor, is operating the Winnie plant with the same work force which was employed by it at the time when title to the facility passed to this company. We also understand that the collective bargaining agreement between your union and Texas Gas Corporation is still in effect in all its terms and conditions.

Further, it is our understanding that your union, pursuant to the terms of the aforementioned collective bar-

gaining agreement with Texas Gas Corporation and in its capacity as certified bargaining agent for certain of that company's employees, has currently reopened that agreement and is engaged in collective bargaining over certain changes in its provisions.

It is hoped that this letter has served to clarify for you this company's relationship with respect to this transaction. Under the circumstances, I am sure you will agree that there is no business for us to discuss and, therefor, that no point would be served by a meeting such as you have suggested.

Please accept my personal thanks as well as the appreciation of this company for your cooperation and assistance in this regard.

Very truly yours,

Original Signed By
D. F. Pierce

DFP/pks

cc: Mr. Clifford W. Potter
Regional Director * * *
23rd Region
Room 6617
Federal Office Building
515 Rusk Avenue
Houston 2, Texas

cc: Victor Sachse, Sr. 1/14/63

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GC ex. 10

WESTERN UNION

Feb 14 63 * * *

Beaumont Tex 14

1963 Feb 14 PM 4 57

Union Texas Petroleum Company, Attn D F Pierce

811 Rusk Ave Hou

Despite your actual control over the employees at the Winnie plant since January 1, and your duty to bargain with this Union concerning their wages, hours and working conditions since that date when we requested recognition and to bargain, you refused both to recognize our majority status and to bargain.

Today we learned that you have decided to close all or part of the plant immediately and contract out work which could be done by many of your employees at the plant. We request that you meet at once with this Union and bargain with us concerning the necessity of any partial or total shutdown, concerning

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the assignment of work during any such shutdown to the Winnie plant employees represented by this Union, and concerning the wages, hours, working conditions and recall rights of these employees. Please let me hear from you at once at 1415 Avenue F, or RA 2-2908, Nederland, Texas

G W Cowart Rep OCAW Int'l Union

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GC ex. 11

UNION TEXAS PETROLEUM

A Division of Allied Chemical Corporation

811 Rusk Avenue • Houston 2, Texas • CApitol 5-0111

DOUGLAS F. PIERCE

Director-Administration,
Petrochemicals

February 18, 1963

Mr. George W. Cowart, Representative
Oil, Chemical and Atomic Workers
International Union
1415 Avenue F
Nederland, Texas

Dear Mr. Cowart:

Reference is made to your telegram of February 14, 1963. I confirm my letter addressed to you on January 11. We did not acquire or assume the collective bargaining agreements made by Texas Gas. We have not had control of the employees at the Winnie Plant. Texas Gas has been operating on an independent contractor basis. Obviously our decision to close the plant in order to prepare it for the use for which it was purchased is not a matter of collective bargaining.

Yours very truly,

D. F. Pierce

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GC ex. 12

UNION TEXAS PETROLEUM

A Division of Allied Chemical Corporation

811 Rusk Avenue • Houston 2, Texas • Capitol 5-0111

J. Howard Marshall

February 14, 1963

President

Texas Gas Corporation

2472 Bolsover

Houston 5, Texas

Attention: Mr. A. C. Gladden

Executive Vice President

Dear Mr. Gladden:

Subject: Operating Agreement

In accordance with Article 13, Sections 13.1 and 13.2 of the independent contractor Operating Agreement between the parties, which has an effective date of December 28, 1962, notice is hereby given you that the Company is terminating that Agreement and your services thereunder as Contractor.

Effective with the end of the day shift on Thursday, February 14, 1963, our Company will assume the full responsibility for the management and operation of the Winnie plant and terminal.

Yours very truly,

/s/ J. HOWARD MARSHALL

JHM/pks

cc: Mr. H. G. Teverbaugh

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GC ex. 13

CERTIFICATE OF DISSOLUTION INTENT

No. 85270

CHARTER OF
TEXAS GAS CORPORATION

CERTIFICATE OF DISSOLUTION INTENT

Filed In The Office Of The Secretary Of State

This 27th Day of December, 1962

LEDGER No. 45290

* * *

5

PLAN OF COMPLETE LIQUIDATION AND
DISSOLUTION OF TEXAS GAS CORPORATION

(1) The corporation shall cease to carry on the business for which it was organized (except insofar as may be necessary for the winding up thereof) as soon as practicable under the circumstances, and in no event later than twelve (12) months from the date this plan of complete liquidation and dissolution is duly adopted by its stockholders in the manner provided in Part Six of the Texas Business Corporation Act.

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Co. ex. 2

SUBJECT: Staff Meeting DATE: January 9, 1963
TO: C. C. Albritton FROM: R. T. Neville
 M. F. Kruger
 W. B. Neidert
 Jesse Cating

The above men will please arrange to have your notes ready for a staff meeting in my office at 9 A.M. on Friday, January 11. The purpose of this meeting will be to discuss work that we should go ahead with at this time. Mr. Clyde Quinn will attend this meeting.

RTN/t

Original Signed By
R. T. NEVILLE

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Co. ex. 3

TEXAS GAS CORPORATION

TEXAS GAS BUILDING
2472 Bolsover Road
HOUSTON 5

February 18, 1963

Mr. J. Howard Marshall
President
Union Texas Petroleum,
a division of Allied Chemical Corporation
811 Rusk Avenue
Houston 2, Texas

Dear Mr. Marshall:

I have your letter of February 14, 1963, terminating the Operating Agreement between Allied Chemical Corporation and Texas Gas Corporation. We complied with your request, and turned over to you at the end of the day shift on Thursday, February 14, 1963, the Winnie plant and terminal. Inasmuch as the contract required 15 days prior written notice, it is assumed that your letter of February 14, 1963, referred to above, was the notice required under Article 13.1 and that the contract continues in effect for 15 days from February 14, 1963.

Yours very truly,

A. C. Gladden

ACG:MQ

cc: Mr. H. G. Teverbaugh

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Co. ex. 4

UNION TEXAS PETROLEUM

A Division of Allied Chemical Corporation

811 Rusk Ave. Houston 2, Texas Capitol 5-0111

Douglas F. Pierce
Director-Administration,
Petrochemicals

February 21, 1963

Mr. A. C. Gladden
Executive Vice President
Texas Gas Corporation
2472 Bolsover
Houston 5, Texas

Dear Mr. Gladden:

Mr. Marshall has requested that I reply to your letter of February 18, 1963, in order to clarify any questions our letter of February 14, 1963, may have raised in your mind.

Your assumption as to the purpose and intent of our February 14 letter is correct—and the 15 days notice required under the provisions of Article 13.1 should be computed beginning with the hour (approximately 8:30 a.m.) you received the letter on that date. On that basis, the contract will officially expire at approximately 8:30 a.m. on February 28, 1963.

We fully understand and respect our obligation under the contract to continue your fee during this 15 day period, notwithstanding the fact that at our request you

ceased performing and have not performed any of the contractual services called for in the contract as of the close of the day shift on February 14, 1963.

Should this not clarify our intent or should you have any further questions on this matter, please don't hesitate to contact us.

Sincerely,

D. F. Pierce

DFP/pks

cc: Messrs. E. G. Flowers

J. H. Marshall

bcc: Messrs. W. A. Beman

H. G. Teverbaugh

* * *

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Co. ex. 9

THIS CONTRACT is made the 20th day of February, 1963, between UNION TEXAS PETROLEUM, a Division of Allied Chemical Corporation, having its principal office in Houston, Texas, hereinafter called Company, and FLUOR MAINTENANCE, INC., a California corporation, having its principal office at 2500 South Atlantic Boulevard, Los Angeles, California, hereinafter called Contractor. * * *

3.0 SCOPE OF WORK

3.1 Contractor shall, as and when requested by Company by prior instructions, perform all work assigned to maintain, repair renovate and modify

Company's plant facilities as herein defined, and perform such other work or services requested in writing by

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Company to keep Company's plant facilities in a condition satisfactory to Company. Such work shall include but not be limited to routine maintenance, emergency work, janitorial services, turn-around work, and other miscellaneous services for plant maintenance, and Contractor shall perform such supplemental services as equipment inspections, engineering services, field surveys, etc., as may be requested by Company from time to time. Work involving premium overtime shall require prior Company approval.

- 3.2 Contractor shall supply all personnel required to properly perform the work hereunder, including supervisory, technical, skilled craftsmen, field office, and unskilled labor. The number of employees required by Contractor to maintain its field office staff and working force shall be subject to approval by Company to the extent such right does not unduly interfere with Contractor's ability to fulfill its obligations under this contract.

* * *

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* When Fluor's Construction Division personnel in non-exempt classifications hold union cards and work under union jurisdiction, they will be paid overtime (either time and one-half or double time), subsistence, and other al-

lowances in accordance with the union agreement covering the craft and area in which they work. * * *

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TRAVEL AND SUBSISTENCE FOR FLUOR FIELD CONSTRUCTION EMPLOYEES

(Field employees who are included in a collective bargaining unit and represented by a union are excluded from this schedule.) * * *

I

Co. ex. 10

February 6, 1963

Mr. Elmo Pace
Fluor Maintenance, Inc.
P. O. Box 7030
East Los Angeles 22, California

Dear Mr. Pace:

Contract Maintenance
Winnie, Texas
Fluor Reference HO-4248

We are pleased to advise you that we have selected Fluor Maintenance for performance of maintenance, renovation and repair work at our Winnie, Texas, facilities, subject to the conditions set forth below:

- (1) The terms and conditions under which this work will be performed shall be as described in Fluor's proposal dated December 10, 1962, as amended in the discussion between your Mr. John Diegel and our Mr. D. F. Pierce on February 4, 1963.

- (2) The contract term shall be for one year.
- (3) A mutually satisfactory basis for obtaining the necessary labor required to staff the job will be developed by you.

Please let us know when you have executed the labor agreement and we will then be ready to activate this project.

Yours very truly,

UNION TEXAS PETROLEUM DIVISION

John Sutherland

JS:bha

cc: Mr. John Biegel
 Fluor Maintenance, Inc.
 968 Houston Club Building
 Houston 2, Texas

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Co. ex. 11

PROJECT AGREEMENT FOR MAINTENANCE BY CONTRACT

This agreement is entered into this 20th day of February, 1963, by and between FLUOR MAINTENANCE INCORPORATED (Company) of LOS ANGELES, CALIFORNIA, (hereinafter referred to as the "Company"), and those INTERNATIONAL UNIONS OF THE AFL-CIO listed hereunder (hereinafter referred to as the "Unions"), for the purpose of maintenance, repair and renovation work for the Union Texas Petroleum (Project) (Division of Allied Chemical Corporation) located at Winnie, Texas (Location).

The Unions are composed of the following International Unions of the AFL-CIO:

International Association of Heat and Frost Insulators
and Asbestos Workers
International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
Bricklayers, Masons and Plasterers International Union
of America
United Brotherhood of Carpenters and Joiners of
America
Operative Plasterers and Cement Masons International
Association
International Brotherhood of Electrical Workers
International Association of Bridge, Structural and
Ornamental Iron Workers
International Hod Carriers, Building and Common
Laborers Union
International Union of Operating Engineers
Brotherhood of Painters, Decorators and Paperhangers
of America

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United Association of Journeymen and Apprentices of
the Plumbing and Pipe Fitting Industry of the United
States and Canada
Sheet Metal Workers International Association
International Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers

Whereas the Company is engaged in the business of
plant maintenance, repair and renovation (as defined in
Article IV) with miscellaneous industries, and this work
is of importance to the Unions herein listed, and it being

recognized there is an essential difference in the conditions required to perform this type of work, the Unions herein listed with the Company wish to enter into an agreement for their mutual benefit covering work of this nature.

Whereas the Unions have in their membership throughout the area members competent and qualified to perform the work of the Company.

Whereas the Company has employed and now employs members of the Union on maintenance, repair and renovation work recognized by the Unions of the AFL-CIO as being within the jurisdiction of said Unions.

Whereas, in order to insure relative equity and uniform interpretation and application, the Unions wish to negotiate and administer said Collective Agreement in concert, each with the other, and all with the Company.

Whereas, the Company and the Unions desire to mutually establish hours of work and working conditions for the workmen on an area basis to the end that satisfactory conditions and harmonious relations will continue to exist for the benefit of both parties to this Agreement.

Whereas the Company and the Unions agree that, due to the particular nature of —the work covered by this Agreement, there shall be no lockouts or strikes during the life of this Agreement, and provisions must be made to achieve this end.

It is therefore agreed by the undersigned Company and Unions in consideration of the mutual promises and covenants contained herein that the project agreement be made as follows:

ARTICLE I -- RECOGNITION

- (1) The bargaining unit under this Agreement shall comprise all craft employees of the Company now employed and employed in the future for maintenance, repair and renovation work at Union Texas Petroleum Plant (Project), Winnie, Texas (Location).

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- (2) The Company

- (a) Agrees that the jurisdiction recognized herein for each Union shall be the jurisdiction recognized by the AFL-CIO, provided, however, that if they of the Unions are unable to agree upon the Union which is to have jurisdiction over any group of employees, the Company will recognize one as having jurisdiction until such time as the Claimant Unions agree upon another and provided further that work considered within the jurisdictions of any craft which is not represented by the Unions listed herein may be assigned by the Company to the jurisdiction of the most appropriate Union.

- (b) Recognize the Unions as herein duly constituted for the purpose of bargaining collectively and administering this Agreement for the members of their respective Unions.

- (c) Agrees to bargain collectively with the Unions and to be governed by the terms of this Agreement and by all lawful settlements of disputes and grievances made pursuant thereto.

ARTICLE II -- UNION SECURITY

- * (1) All craft employees covered by this Agreement and members of the Unions now in the employ of the Company shall remain members in good standing in the Union during the term of this Agreement.
- * (2) All craft employees covered by this Agreement hereinafter employed by the Company shall become members of their respective Union having recognized jurisdiction over their trade on the earliest possible date provided by applicable Federal and/or State Law after their employment, or the date of the Contract, whichever is later, and shall remain members of the Union in good standing during the term of this Contract. This clause shall remain in full force and effect as long as the State included in the area permits Union Security.
- (3) Either party to this Agreement shall have the right to open negotiations pertaining to Union Security when the Federal or State Laws applicable thereto have been changed by giving the other party thirty (30) days written notice.

*NOTE: Paragraphs 1 and 2 do not apply in states with Right to Work laws.

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ARTICLE III -- SCOPE OF WORK

- (1) The scope of this Agreement covers all work assigned by the owner to the Company and performed by the employees of the Company covered by this agreement within the plant limits of the Union Texas Petroleum Plant (Plant) located in Winnie, Texas (lo-

cation) of a maintenance, repair and renovation nature.

- (2) The scope of this Agreement does not cover work performed by the Company of a new construction nature which is work required to erect new facilities in which event the work shall be done in accordance with existing building construction agreements.
- (3) The Unions and the Company understand that the owner Union Texas Petroleum (Division of Allied Chemical Corp.) (Name) may, at his discretion, choose to perform or directly subcontract work for any part or parts of the work necessary in his plant. * * *

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ARTICLE IX -- REFERRAL OF MEN

- (1) Maintenance work that the Company performs involves maintaining operating units that in almost all cases must be kept running. This situation means that much of the work is of an emergency nature, and, therefore, will require at times the acceptance of extreme fluctuations in the labor demands made by the company on the Unions. The Unions, by this Agreement, completely understand the necessity of these extremes and agree to make every effort to fulfill the manpower requirements of the Company.
- (2) When employees are required the Company shall request that the required number of applicants be referred for employment under the following minimum standards:
 - (a) The selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on or in any way affected by union

membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policy, or requirement.

- (b) The Contractor shall retain the right to reject any applicant referred by the Union.
- (c) The Union shall post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the function of its hiring arrangements including the provisions herein set forth. The Employer shall similarly post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the function and operation of the hiring arrangements including these provisions.
- (3) In addition to the foregoing minimum standards the Unions agree to refer all applicants for employment to this project according to the standards or criteria uniformly applied to any project in the area. All exclusive referral procedures must establish Appeal Boards and the Contractor and the Unions agree to be bound by all decisions of the Appeal Boards.

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- (4) The Contractor agrees to be bound by the hiring practices in the local area not inconsistent with the terms of this Agreement provided that, where the hiring provisions or practices that prevail in a local area are on other than an exclusive basis, such provisions or practices shall be applicable if not in violation of either state or federal law.

- (5) Because of the fact that there are several Unions signatory to this Agreement, it is agreed that it would be impractical to attach or make part of this agreement the individual hiring plans of those Unions.
- (6) The Company and the Unions therefore agree that the Unions will offer their area hiring plans to the Company by letter of transmittal. The Company agrees that upon reviewing said plan, it will offer a letter to the International Unions in which they acknowledge and accept the hiring plan. These letters will then by agreement become part of this master contract.
- (7) The designation and determination of the number of Foremen and other supervisory personnel is the responsibility of the Company subject to Article V—Grievance Procedure.
- (8) Men referred to the job shall report to an Employment Office established at the job site.
- (9) The above hiring provisions have been entered into in order to comply with the Mountain Pacific doctrine of the National Labor Relations Board. Upon any Board or Court decision or administrative ruling modifying or changing the Mountain Pacific doctrine, either party to this Agreement shall have the right to reopen negotiations pertaining to this Article by giving the other party thirty (30) days' written notice.
- (10) It is mutually agreed by the parties hereto that if any liability between signatory International Unions to this Agreement should arise, such liability shall be several and not joint. * * *

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Co. ex 12

WESTERN UNION

Feb 21 1962

-D BHA284 PD BEAUMONT TEX 20 424P CST
DOUG PIERCE, UNION TEXAS PETROLEUM
811 RUSK AVE HOU

Following wire received today: From Washington DC 20 328P EST to KEN Western Director of Labor Relations The Fluor Maintenance Corp 2500 South Atlantic Blvd Los Angeles Calif quote in accordance with the recommendation of the sub committee after their meeting held today in Beaumont Texas this office on behalf of the General Presidents Committee is granting Fluor Maintenance Inc permission to operate under our project agreement for maintenance covering work at the Union Texas Petroleum facility located at Winnie Texas. A copy of this wire will be forwarded to all International Unions signatory to the project agreement for maintenance by contract for their attention and action and with the request that they notify their respective Local and International Representati

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ves to this effect. This agreement is being granted prior to our March Contract Maintenance Meeting due to the emergency nature of work involved, signed John J Mc Cartin Assistant General President UA and Chairman General Presidents Committee (47) 102P PST 2-20-63 unquote. This should enable signing of contract and starting work immediately

FLUOR MAINTENANCE INC ELMO PACE

Co. ex. 13

In the event of sale of all or part of the Company's stock or property, the sale shall be made subject to the Agreement and the purchaser or purchasers shall be required to assume all the obligations of the Company under this Agreement.

Requested as Contract Amendment by OCAW at Dec. 22 meeting.

Co. ex. 14

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION

Beaumont Local No. 4-243

Beaumont, Texas

January 10, 1963

Mr. Earl Elliott
Texas Gas Corporation
2472 Bolsover Road
Houston 5, Texas

Dear Mr. Elliott:

On December 22, 1962, the Union notified the Company orally that we wish to open the agreement under Article II, Section 3, for the purpose of negotiating a wage increase. This will confirm our oral notice to you; we are prepared to meet with you at your earliest possible convenience.

Sincerely yours,

/s/ George W. Cowart
George W. Cowart, Int'l. Rep.
OCAW International Union

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Co. ex. 15-B

OIL, CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION

Beaumont Local No. 4-243

Beaumont, Texas

January 11, 1963

Mr. Earl Elliott
Texas Gas Corporation
2472 Bolsover Road
Houston 5, Texas

Dear Mr. Elliott:

In accordance with Article II, of the agreement between the Union and the Company dated November 10, 1962, this is notice of our desire to open the Agreement for the purpose of negotiating a wage increase.

If no agreement is reached on this matter prior to March 16, 1963, this is our notice of termination of the agreement.

Copies of this letter are being mailed to the appropriate governmental agencies.

Very respectfully yours,

/s/A. O. Mitchell
A. O. Mitchell, Chairman
Texas Gas Group
OCAWIU, Local 4-243
2490 S. 11th Street
Beaumont, Texas

cc: Fed. Med & Conc. Ser.
cc: State Dept. of Labor

Co. ex. 16

Letter of Agreement Concerning D. F. Fischer

Mr. D. F. Fischer has requested early termination of his employment with Texas Gas Corporation and that he receive all benefits now that he would be entitled to should he remain an employee until final liquidation of Texas Gas Corporation.

After consideration of this request, the Company finds that we can grant this request without training of additional personnel and at no further cost to the Company in filling Mr. Fisher's classification.

Therefore, it is agreed by all parties concerned that this is a special case and in no way sets a precedent in regard to other cases which may arise.

It is further understood that consideration of other similar requests will be given on the merits of that case and whether or not the request can be granted without excess training costs or burden to the Company.

It is further agreed by all parties concerned that this is a requested termination by Mr. Fischer; therefore, Article X, Layoffs and Reductions Within Classification of the Existing Agreement Between Oil Chemical and Atomic Worker's Union and Texas Gas Corporation, does not apply.

Workmen's Committee
J. L. Lindsey
A. O. Mitchell
A. T. Miles

/s/R. T. Neville
R. T. Neville
January 17, 1963
/s/D. F. Fischer
D. F. Fischer

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Co. ex. 17

December 31, 1962

Mr. A. C. Gladden

The Contractor's Agreement, described above, provides (Sec. 4) for your reimbursement on a cost plus basis. This letter will serve to record our understanding with respect to maximum employee costs properly chargeable thereunder.

Hourly-paid employees will not exceed in number in each job classification those now employed by you. (Since truck delivery operations will not be conducted as part of the operations, no personnel will be employed by you in this area.)

Full time of one employee in each of the following classifications will be devoted to the operations:

- (a) General Plant Superintendent
- (b) Manager - Pipelines
- (c) Payroll Clerk
- (d) Mail Boy

Duties of one employee in each of the following classifications will be partially devoted to the operations:

- (a) Executive Vice President
- (b) Secretary
- (c) Controller
- (d) Personnel Manager (including any other personnel required to handle personnel functions)

Salaries and wage rates are not to exceed those paid by Texas Gas Corporation on December 15, 1962. The allocation of labor costs of the general office employees shall be based on actual hours worked. The accounting services to be performed (as outlined in Section 3.5 of the subject agreement) shall be limited to:

- A. The preparation of all such basic accounting documents as are normally prepared by field personnel; that is, truck, tank car and barge manifests, gas measurement and balance reports, warehouse transfers, receiving reports, inventory reports, etc.
- B. A monthly invoice, in triplicate (as provided for in Section 5 of the subject agreement) detailing and substantiating the costs chargeable to Company.
- C. All bills of sale covering purchases made by the Contractor under Section 3.6(a) and 3.6(b). These shall be provided to Company's representative at the plant prior to submission for reimbursement with the monthly invoice. Company hereby designates Mr. C. V. Quinn as the Company's official representative at the gasoline plant, pipeline and terminal facilities. He may, however, from time to time delegate in writing such of his duties as official representative that he sees fit to other company representatives.

Yours very truly,

/s/H. G. Teverbaugh
H. G. Teverbaugh
Vice President

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Co. ex. 18

TEXAS GAS CORPORATION

TEXAS GAS BUILDING
2472 Bolsover Road
Houston 5

January 31, 1963

Mr. Harold G. Teverbaugh
Vice President, Plant Operations
Union Texas Petroleum
a Division of Allied Chemical Corporation
811 Rusk Avenue
Houston 2, Texas

Dear Mr. Teverbaugh:

I have your letter of December 31, 1962, which we received January 22, 1963, relative to your understanding of what you will reimburse us for under Section 4 of our Contractor Agreement dated December 28, 1962, relating to the operation of the Winnie plant and pipeline facilities.

My understanding of the contract required only that you notify us in writing whom you were going to designate as your company's official representative.

Section 4 of the contract provides "Company shall reimburse Contractor for all direct labor cost, cost of supervisory and office personnel labor, insurance cost, cost of permits and inspections, general expenses, and any like costs incurred by Contractor in sub-contracting jobs for its own account".

Also Paragraph 3.2 provides "Contractor shall supply all personnel required to properly perform the work hereunder, including supervisory, technical, skilled craftsmen, field office, and unskilled labor not in excess of the number now employed, except on written authority of Company".

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The contract further provides under Paragraph 3.5 "All of Contractor's cost records of work performed hereunder shall be subject at any reasonable time to Company's inspection and audit".

To me the above is very clear and does not need a letter of understanding, particularly inasmuch as your letter failed to provide for reimbursement for salaried personnel at both the Winnie plant and pipeline facilities.

I would also like to point out that the contract does not contain a limitation relative to wage increases; therefore, we could not agree that salaries and wage rates will not exceed those paid on December 15, 1962, as this would be an amendment to the contract, which I cannot make as this contract has been approved by our Board of Directors and can be altered only with its approval.

Sincerely,

Original Signed By:

A. C. GLADDEN

A. C. Gladden

ACG:MQ

cc: Messrs. J. H. Marshall
D. F. Pierce

Co. ex. 19

CERTIFIED COPY OF MINUTES AND RESOLUTION
OF BOARD OF DIRECTORS OF
TEXAS GAS CORPORATION * * *

meeting of the said corporation's Board of Directors was held at Houston, Texas on the 22nd day of February, 1963, at 11:00 o'clock A.M.;* * *

The members were advised that it would be desirable to authorize "notice pay be made to the employees of the Winnie plant since no prior notice had been given to said employees when the plant was shut down on February 14, 1963, said "notice" pay to be made in addition to the severance and accrued vacation pay provided in the labor contracts. Following discussion, and upon motion duly made and seconded, it was unanimously

RESOLVED, that the appropriate officers of the Corporation, acting for and in its behalf, be and each is hereby authorized to pay all hourly paid employees, in addition to accrued vacation pay and the severance pay plan provided in the labor contracts, one week's pay in lieu of notice prior to the shutdown of the Winnie plant. * * *

Co. ex. 22

TEXAS GAS CORPORATION
TEXAS GAS BUILDING

2472 Bolsover Road

Houston 5

February 28, 1963

Re: Texas Gas Corporation
Benefit Plans

Gentlemen:

The retirement information requested from Metropolitan

Life Insurance Company has been delayed and will not be available until next week. As soon as it is available you will be advised when and where I will have such information available for discussion. I will mail information and forms to those persons who are unable to discuss these matters with me personally.

There are still a few of you that have not completed the forms required for withdrawal from the Savings Plan. Those requiring these forms should advise me as soon as possible.

Hospitalization coverage expires today. If you have not yet converted your hospitalization and wish to do so, you should contact either the local Metropolitan agents at 412 Mariposa Street in Beaumont or write me for conversion forms.

Letters of recommendation are being written as fast as possible and will be mailed to you when completed.

All insurance claims filed under our Texas Gas hospitalization policy should hereafter be sent to: Mr. J. P. Furey, Supervisor, Health Claims Division, Metropolitan Life Insurance Company, One Madison Avenue, New York 10, New York. When filing such claims you should make reference to Group Contract 16551-G.

Please direct all future questions to me at P. O. Box 6846, Houston 5, Texas.

Very truly,

/s/ EARL D. ELLIOTT
Earl D. Elliott

EDE/ajm

Co. ex. 24-B

MAINTENANCE EXPENDITURES
WINNIE PLANT
FEBRUARY THROUGH MAY 1963

Plant General	\$ 67,600
Compressors	46,800
Boilers, Water Treaters & Steam Lines	30,600
Cooling Towers & Heaters	6,800
Fractionation & Pipe, Valves & Fittings	89,000
Pipe, Valves & Fittings, Field	1,400
TOTAL	\$ 240,800

Items aggregating \$25,300 appear on list of Preliminary Expenditures for Petrochemical Conversion of Winnie Plant.

Co. ex. 25-B

CAPITAL EXPENDITURES
WINNIE PLANT
FEBRUARY THROUGH MAY 1963

COMPRESSORS	
Jacket Water Temperature Controls	\$ 32,900
Vibra Switches	5,700
	\$ 38,600

BOILERS, WATER TREATERS & STEAM LINES	
Hagan Combustion Controls	\$ 33,200
Barber Coleman Shut Down Controls	25,500
Boiler Feed Control Piping	2,600
Steam Line Revisions	7,600
	\$ 68,900

STORAGE AREA	
Automatic Tank Gauges	\$ 43,800

ABSORPTION PLANT 1 & PLATFORMER

Pipe Bridges	\$ 26,100
Centrifix Separators	4,600
Retray H.P. Still T-4	6,800
Annunciators	5,600
*Cooling Water Lines	17,100
	\$ 60,200

ABSORPTION PLANT 2

Instrument Air Drier & Piping	\$ 13,800
H.P. Absorber By Pass	4,600
Naphtha Tower Condenser	10,000
Annunciators	5,600
Retray Towers, Install Tower & Piping Revisions	85,400
*Salt Water Disposal	2,400
	\$ 121,800

TOTAL \$ 333,300

* Gasoline Plant Operation Expenditures

Co. ex. 41

INTER-OFFICE MEMORANDUM

TO: The File

FROM: John A. Sutherland

DATE: February 13, 1963

SUBJECT: Terms of Employment Offered to Salaried Personnel at the Winnie Plant

1. Employment to be temporary with individual interviews to take place during the next thirty (30) days with regard to possibilities of permanent employment with Allied.

2. All salaried employees desiring to go on Allied's payroll as temporary employees to be placed on Allied's payroll effective with the end of the day shift on Thursday, February 14, 1963, at the same salary they were making as employees of Texas Gas.

3. As temporary employees, no physicals will be required.
JAS/pks

Co. ex. 42

UNION TEXAS PETROLEUM

A Division of Allied Chemical Corporation

811 Rusk Avenue • Houston 2, Texas • Capital 5-0111

DOUGLAS F. PIERCE

February 22, 1963

Director-Administration,
Petrochemicals

Dear

We are presently commencing to modify the Winnie Plant to fit it into our petrochemical operations. With the extensive modifications planned, we expect to have substantially fewer job positions when the plant is reopened than Texas Gas Corporation has had. In the permanent staffing of the plant we plan to give consideration to men presently in our employ at other plants. We also want to give consideration to you. We expect to start interviewing for this purpose shortly after April 1. If you are interested in being considered for work at that time, please write me at the above address and an application form will be mailed to you. Following our receipt of the completed application form, you will be notified of the exact time and place for an interview.

If you have been engaged in maintenance work, you may wish to apply to The Fluor Corporation, Ltd., as this company will handle maintenance at this plant on an independent contractor basis.

Yours very truly,

/s/ D. F. PIERCE

D. F. Pierce

DFP/pks

Co. ex. 43

Dear

Re: Application for Employment

Thank you for your letter request dated _____, 1963, concerning application for employment with our company. Enclosed is the requested application form which you should complete and mail back to me at the above address.

Following receipt of the completed application form, you will be notified of the exact time and place for an interview. As mentioned in my letter of February 22, 1963, we do not expect to start interviewing until after April 1.

Thank you again for your interest.

Yours very truly,

D. F. Pierce

DFP/pks

Enclosure

Co. ex. 44

Dear _____:

Re: Application for Employment

This will acknowledge receipt of your completed application form. You will be notified as soon as possible regarding an exact time and place for an interview.

Thank you for your interest.

Yours very truly,

D. F. Pierce

DFP/pks

Co. ex. 45

Dear _____:

Assuming that you are still interested in the possibility of employment with us at our Winnie plant would you please arrange to be present at our Winnie plant in Winnie, Texas, on April _____, 1963, for an interview. Interviewing hours will be from _____ a.m. to _____ p.m. and from _____ p.m. until _____ p.m.

Yours very truly,

D. F. Pierce

DFP/pks

Co. ex. 46

Dear _____:

Subject: Employment

Subject to your satisfactory passing our company's routine pre-employment physical, you are hereby offered em-

ployment at our Winnie, Texas plant in the position of _____ at \$_____ per hour.

If this is acceptable to you, please so signify by reporting to Mr. E. H. Gotcher, Plant Superintendent, at the Winnie plant between the hours of 9:00 A.M. and 10:00 A.M. on Thursday, May 9, 1963, and presenting this letter to him. At that time you will be told when and where to go for your physical examination.

Yours very truly,

D. F. Pierce

DFP/pks

Co. ex. 60

PSYCHOLOGICAL SERVICE, INSTITUTE, INC.

P. O. Box 66444 Houston 6, Texas JA 6-2947

Personnel and Vocational Consultants

March 14, 1963

Mr. John A. Sutherland
General Manager - Plant Operations
Union Texas Petroleum Corp.
Tulsa, Okla.

Dear Mr. Sutherland:

In answer to your request, I submit the following information and recommendations concerning the minimum qualification requirements for operating and maintenance personnel for processing plants as you described in our conversation.

In 1949 we made a very careful and critical study of the performance of the people then in these jobs in several comparable plants in relation to their performance scores on

certain standard employment type tests. We found that those employees who scored at least:

16 correct answers on the Wonderlic Employment Test
and also 22 correct answers on the Mechanical Insight -
or

20 correct answers on the Wonderlic and 21 correct
answers on the Mechanical Insight

were able to master the technical knowledge and skills involved in the plants in an acceptable manner. Many years of follow-up on many thousands of people in this work have substantiated these findings. These standards were then adopted as a minimum level of mental competence for new employees.

In addition to the mental aptitudes involved, it was found that those employees who indicated weak self-direction and control, or instability and immaturity, failed to be able to satisfactorily adapt to the people with whom they worked or to persist in their efforts and carry on their work in a safe and dependable fashion. As a result, a reasonable degree of maturity and stability (as indicated by a standardized temperament scale) was also considered as one of the important qualifications for employment in these jobs.

Fourteen years of experience have proven these minimum standards as sound and workable and I recommend that they be accepted in your company in the future due to the highly technical nature of the work involved and the potential hazards involved in employing incompetent or unstable people into these roles. These standards should apply regardless of race, color, or creed.

I also suggest that when the test materials are sent to the Psychological Service Institute, Inc., for scoring and interpretation that in no way is there any mention or indication as to race, color or creed of the applicants. We pledge to treat the materials with professional integrity and not to consider any other qualities of the applicants except those reflected by the psychological test results.

Sincerely yours,

/s/ WILLIAM C. FORD
William C. Ford, President
Psychological Service Institute, Inc.

WCF:dg

1

Co. ex. 61

PSYCHOLOGICAL SERVICE, INSTITUTE, INC.
P. O. Box 66444 Houston 6, Texas JA 6-2947
Personnel and Vocational Consultants

April 12, 1963

Mr. John A. Sutherland
General Manager - Plant Operations
Union Texas Petroleum
Tulsa, Okla.

Dear Mr. Sutherland:

We appreciate the opportunity to be of service to you and your company in the present personnel evaluation program for the Winnie plant. By way of summary, I would like to offer the following comments concerning the people evaluated.

Twenty one (21) out of the thirty five (35) people who have been working in the other plants met the minimum standards for employment in the Winnie plant, and fourteen (14) did not. It is recommended that the latter group be retained in their older assignments where they are familiar with the routine and the people involved.

Several of the members who did qualify seem to have the abilities and temperamental qualities that should equip them to assume a leadership role. These include Chapman, Daigle, Hargraves, Harris, Hill, and Woodard. It might be wise to assign them among the various areas of operation in order to have the better qualified in a supervisor's role as needed.

Mr. Farson is a very capable person and could perform as a leader, but probably would be worth more to the organization in some technical specialist role with adequate training and experience.

The remainder of the group should prove to be capable of mastering the knowledge and skills involved and grow with the work as it becomes more complex and technical. They should prove also to be stable and dependable employees with proper leadership.

2

Twenty two (22) out of the fifty six (56) applicants who had previously worked at the Winnie plant met the minimum standards for employment. Of this group that qualified, several seem to have very good qualifications and potential for growth in knowledge and breadth of responsibilities.

Messrs. Atwood, Mack, and Blaylock have keen minds and noticeable self-drive, and seem to be stable and mature. All three also have leadership possibilities. Oswell Little has a very keen mind and adequate stability but his noticeably reserved and unsociable nature makes him more adaptable to a specialist role in some work like laboratory, instrumentation, or some administrative role. Mr. Walters does not seem to have the basic qualities of people in laboratory work and is misplaced. Mr. Pendergrass is well suited for laboratory work and is the better of the two for this assignment.

Mr. Martin has noticeably strong tendencies toward prolonged moody spells and I advise that his accident and performance record be carefully studied before making a decision on his qualifications for employment in plant work.

The remaining fifteen (15) are mentally capable and have adequate stability for operation or maintenance craft work and should prove to be dependable employees under proper leadership.

Hoping these comments will be of some value to you, I remain

Sincerely yours,

/s/ WILLIAM C. FORD
William C. Ford, Ph.D.

WCF:dg

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Co. ex. 62

TEST SCORES ON WONDERLIC AND MECHANICAL
APTITUDE TESTS FOR TEXAS GAS CORPORATION
EMPLOYEES LISTED ON EXHIBIT A
OF COMPLAINT

Name	Wonderlic Score	Mechanical Aptitude Score
Huey Abshire	Did not take tests	
Y. D. Allen	12	18
Ted Atwood	29	27
Willie Bertrand, Jr.	11	17
A. Besch	6	11
B. W. Biddle	Did not take tests	
W. H. Blaylock, Jr.	30	31
J. Boudreaux	Did not take tests	
A. Bourque	Did not take tests	
F. L. Bourque	23	28
R. L. Bower	12	11
Wilburn Bragg	14	15
Ambrose Breaux	Did not take tests	
H. B. Briggs	7	10
I. D. Buckley	17	14
N. D. Cooper	17	20
L. P. Crosby	Did not take tests	
E. A. Cryer, Jr.	24	22
Melvin Cummins, Jr.	12	12
Robert Devillier	Did not take tests	

Name	Wonderlic Score	Mechanical Aptitude Score
R. N. DeYoung	15	24
W. C. DeYoung	20	27
E. B. Dressler	9	18
J. R. Duhon	15	24
G. R. Falke	12	10
J. A. Freeman	13	23
E. E. Galligan	12	20
W. M. Goodnight	9	15
O. R. Hampton	17	23
J. R. Henry	20	21
M. F. Henry	3	12
J. D. Holt	17	7
Fred Johnson	31	29
H. M. Jones	Did not take tests	
E. E. Kahla	13	17
E. Keeler	31	27
D. E. Keenon	10	20
H. W. Keneson	16	16
A. G. Lassiter	24	24
J. L. Lindsey	24	20
O. W. Little, Jr.	34	30
C. W. Lowe	22	22
A. F. Mack, Jr.	36	34
B. B. Majors	10	18
W. W. Martin	18	21
Mark McAlpin	20	22

Name	Wonderlic Score	Mechanical Aptitude Score
T. L. McClure	Did not take tests	
T. J. McCormic	27	21
Elmo Melancon	Did not take tests	
Erasta Melancon	Did not take tests	
Martin Melancon	7	12
W. E. Meschke	Did not take tests	
A. T. Miles	18	26
A. O. Mitchell	17	25
R. O. Mitchell	19	24
H. E. Moffett	16	26
Ray A. Null	Did not take tests	
A. W. Pendergrass	16	22
Jack W. Reynolds	18	17
Carl Satcher	Did not take tests	
Maurice Shaver	17	17
O. R. Shockley	Did not take tests	
R. M. Spencer, Jr.	22	29
Edgar I. Staggs	19	14
L. A. Stengler	26	24
W. D. Taylor	32	24
Gordon Trahan	Did not take tests	
William Van Norstrand	22	20
J. B. Voss	21	23
R. G. Walters	22	24
R. E. Wells	15	20
Leslie Whiddon	12	14

1

Co. ex. 62-A

Name	Wonderlic Score	Mechanical Aptitude Score
R. D. Aguillard, Jr.	26	9
James E. Bean	26	21
Howard Bruce	8	23
Ernest W. Chandler	11	22
Elroy Chapman	23	30
Donald L. Clark	26	23
Dock L. Cooley	13	10
Floyd Barry Daigle	22	23
Alvin David	8	14
Edward Henry Farson	34	32
Luther V. Folsom	22	21
Johnnie Lee Hargraves	16	23
Kenneth Wayne Harris	25	23
Clemit Wayne Hendricks	19	21
Harrison E. Hess	12	22
Oland D. Hill	22	24
James Thomas Humphreys	17	22
Charles B. Kimball	25	28
Edgar L. Kimball	18	13
George R. Lester	17	25

2

Bobby Leroy Miller	20	23
Winton Milliff	18	8
Troy J. Moore	16	22
Richard E. Nesbitt	9	12

W. A. Nixon	12	14
Raymond Parnell	19	23
John William Phelps	18	29
Rodney J. Richard	17	22
Paul M. Rowley	18	15
Allan Rowoldt	15	5
Melvin K. Stevens	19	23
Jerry Ben Templin	22	21
Bobby Ryan Thompson	27	24
Glen D. Wilkes	23	35
Jesse Ray Woodard	20	21

Co. ex. 63-A

INTER-OFFICE MEMORANDUM

TO: Shift Foreman
 FROM: R. C. Herrington
 DATE: January 24, 1963
 SUBJECT: Tank Car Loading

Load the following Tank Cars with STENCHED PRO-PANE. Load to ten (10) inches outage.

MOBX 43109
 MOBX 43169
 MOBX 43122
 MOBX 33135

/s/ R. C. HERRINGTON

cc: M. F. Kruger
 Loading Rack

Co. ex. 63-B

INTER-OFFICE MEMORANDUM

TO: M. F. Kruger
FROM: R. C. Herrington
DATE: January 24, 1963
SUBJECT:
R. F. Rothenberger,
P. O. Box 305,
Nome, Texas

The above named customer is authorized to purchase products at the Winnie Plant loading rack on terms of 1%, Cash. Beaumont Area Price Schedule will apply on this account.

/s/ RCH

cc: Loading Rack
Shift Foreman

Co. ex. 63-C

INTER-OFFICE MEMORANDUM

TO: M. F. Kruger
FROM: R. C. Herrington
DATE: January 24, 1963
SUBJECT: Lindsey Oil
Company

In the future, temperature correction on products picked up for delivery to the above named customer, will be figured by the invoicing department in the Houston Office rather than at the Winnie Plant loading rack.

cc: Loading Rack
Shift Foreman

Co. ex. 63-D

INTER-OFFICE MEMORANDUM

TO: Shift Foreman
FROM: R. C. Herrington
DATE: February 1, 1963
SUBJECT: Tank Car Loading

Load the following cars with STENCHED PROPANE.
Load to ten (10) inches outage.

UTLX 96387
UTLX 94667
MOBX 23121
MOBX 23125

/s/ R. C. HERRINGTON

Co. ex. 63-E

INTER-OFFICE MEMORANDUM

TO: Shift Foreman
FROM: R. C. Herrington
DATE: February 11, 1963
SUBJECT: Tank Car Loading

Load the following tank cars with STENCHED PROPANE. Load to ten (10) inches outage.

UTLX 94154
UTLX 87860

/s/ RCH

cc: M. F. Kruger
Loading Rack

Co. ex. 63-F

INTER-OFFICE MEMORANDUM

TO: Shift Foreman
FROM: R. C. Herrington
DATE: February 13, 1963
SUBJECT: Tank Car Loading

Load the following car with STENCHED PROPANE.
Load to ten (10) inches outage.

UTLX 94237

/s/ RCH

cc: M. F. Kruger
Loading Rack
File

Co. ex. 63-G

INTER-OFFICE MEMORANDUM

TO: Shift Foreman
FROM: R. C. Herrington
DATE: January 18, 1963
SUBJECT: Tank Car Loading

Load the following tank cars with STENCHED PROPANE. Load to ten (10) inches outage.

UTLX 93855
MOBX 43125
MOBX 43135
MOBX 33112
MOBX 33161
MOBX 43119

cc: M. F. Kruger
Loading Rack

Co. ex. 63-H

INTER-OFFICE MEMORANDUM

TO: Shift Foreman
FROM: R. C. Herrington
DATE: January 31, 1963
SUBJECT: Tank Car Loading

Load the following two cars with STENCHED PROPANE. Load cars to ten (10) Inches outage.

UTLX 91847
MOBX 53107

/s/ R. C. HERRINGTON

cc: Loading Rack

Co. ex. 66

INTER-OFFICE MEMORANDUM

TO: W. R. Lucas
FROM: C. M. Grace
DATE: December 4, 1962
SUBJECT: Operation Opportunity

The following work summaries and engineering schedules have been prepared and are attached for your use.

1. Current Work Summary
2. Completed Work Summary
3. Plant Shutdown Schedule
4. One Stage Plant Expansion Schedule

attachments

cc: Messrs. W. C. Baker
W. A. Beman
D. F. Pierce
J. A. Sutherland
H. G. Teverbaugh
E. P. Wilkinson

1

OPERATION OPPORTUNITY CURRENT WORK SUMMARY

(As of December 3, 1962)

1. GAS SUPPLY

As a result of our discussions with Texas Gas, the following conclusions were reached: If the absorbed plants are not operated, the gas to Transco will not meet the hydrocarbon dew point of 30°F that they expect to receive. The hydrocarbon dew point will probably approach 50°F, assuming the dehydrators at Orange County will depress the dew point approximately 15°F. This has been questioned since it is believed that the dehydrators are already removing some hydrocarbons and when slugged with gas containing larger quantities of hydrocarbons might become ineffective for hydrocarbon removal. If U.T.P. is successful in negotiating with Transco to receive gas with a higher hydrocarbon dew point and the plant compressor station is operated all gas sales can probably be met.

RECOMMENDATION - Transco should be contacted at an early date. All other gas customers should also be

contacted and informed of the anticipated plans. A detail plan for gas supply should be worked out with Mr. Ed Shettle, Manager of Pipeline Operations.

2. GULF STATES UTILITIES

It has been assumed that Allied Chemical will be able to convince Gulf States to loop their line and thereby eliminate the frequent power failures. No provisions will be included in the Isomax or New Reformer Designs for steam turbine driven spares to keep these units operating in the event of a power failure.

RECOMMENDATION - This matter should be discussed with Gulf States in the near future to insure that the above assumption is valid.

3. INITIAL INSTRUMENT REVISIONS

- A. Bill Baker will go to Winnie Tuesday, December 4 to meet with Walter Neidert. In the A.M. the existing boiler controls and additional instrumentation required will be discussed. In the P.M. will meet with representatives of Hagan and Republic to solicit quotes on the boiler instrumentation package.
- B. Charles Grace met with Clark Brothers today (12/3/62) to review a proposal for installing safety controls on all engines at Compressor Station No. 1. This proposal will be revised and the updated proposal should be received Wednesday, December 5.
- C. An estimate of present and future instrument air requirements was received today (12/3/62). Vendors will be contacted for quotes on an instrument air compressor package.
- D. Investigating relocation of Gas Controllers.

4. PRODUCT SUPPLY STUDY

A complete summary of product supply capabilities during plant shutdown and the resulting economics is being prepared. This summary will include all products produced at Winnie and based on both 30 (anticipated premium gasoline inventory) and 50 (anticipated regular gasoline inventory) days supply. Scheduled to be completed Wednesday, December 5.

2

5. PACE WORK

A. Pace is preparing several alternate process schemes for the Winnie Plant Expansion and Modernization Program. Due Thursday, December 6.

B. A meeting is tentatively set for Thursday, December 6, to review and discuss the Pace schemes.

6. U.O.P. WORK

A. Isomax Schedule A Program is being reactivated. A new design basis consistent with the 8500 BBL/Day condensate capacity is being prepared and will be forwarded to U.O.P.

B. U.O.P. is continuing work on the Reformer Revamp Schedule A. This package will be revised for the 3600 BBL/Day charge rate and is scheduled for completion the latter part of January.

7. NEW LOW PRESSURE REFORMER

The design basis for the new 2000 BBL/Day low pressure reformer is being prepared and will be submitted

to licensors for quotes when completed. This selection will be two staged; first, a process licensor will be selected and then a contractor selected to prepare a Schedule A.

S. PLANT PERSONNEL

As a result of the strike at the Winnie Plant and subsequent operations with a minimum work force (supervisory personnel only) several detailed staffing studies were made. These are presently being summarized and will be forwarded to Mr. Sutherland when completed.

9. PLANT SHUTDOWN

Continue gathering information and planning as required.

CMG/bam

I

OPERATION OPPORTUNITY COMPLETED WORK SUMMARY

(As of December 3, 1962)

- | | |
|----------|---|
| Complete | 1. Review and discuss original Pace Process and Mechanical Specification Package: |
| Complete | A. Scope of work. |
| Complete | B. Engineering design time and cost estimate. |
| Complete | C. Solution to utilities problems. |
| Complete | 1. Steam requirements. |
| Complete | 2. Cooling requirements (Received cooling tower data from TGC 11/19/62) |
| Complete | 3. Electrical requirements. |
| Complete | 4. Instrument air requirements. |
| Complete | 5. Vacuum condenser for steam condensate recovery. |

- Complete D. Solution to fractionation problem.
- Complete E. Udex Considerations.
- Complete F. Presentation of first process alternate and discussion. Also time and cost estimate for this work.
- Cancelled G. U.O.P. Sch. A. Reformer Revamp Integration Definitive Design Package.
- Cancelled H. Ability to handle design of Centralized Control System.
- Cancelled I. Naphtha Splitter Supplement Package.
- Complete 2. Plant step-wise shutdown and start-up procedures.
- Complete A. Partial plant shutdown with continued operation of absorber plants for gas processing.
- Complete B. Plant's ability to stockpile reformat and/or naphtha.
- Complete C. Obtain detailed list of storage tank sizes, services, and possible alternate services.
- Complete E. Condensate vapor pressure problem—procedure for storage and shipment if not processed at plant. No shipping problem; adequate storage space available.
- Complete E. Octane blending problems at reduced production.
- Complete F. Economic Comparison of Gasoline Plant Revisions at Winnie, Texas.
- Complete G. Condensate inventory requirements.
- Complete 3. Gas delivery problems.
- Complete A. Obtain a summary on contract limitations and specifications of residue gas. (Moisture content, hydrocarbon content, H₂S content and delivery pressure.)

- Complete B. Discuss plant's ability to segregate gas.
- Complete C. Obtain design data and capabilities of the plant dehydrators. Obtain gas characteristics if the absorption system is not in operation.
- Complete D. Obtain a copy of TGC gas pipeline map and schematic flow diagram.
- Complete E. Obtained briefs of gas contracts.
- Complete 4. U.O.P. work schedule.
- Complete A. Obtain completion schedule data for U.O.P. Sch. A Reformer Revamp Package and a construction cost estimate for this work.
- Complete B. Obtain a copy of U.O.P. contract.
- Complete C. Obtain a copy of the reformer operating manual.
- Complete D. Discuss possibility of starting Isomax and New Reformer Schedule A Packages to take advantage of royalty credits. (Woolfolk stated 11/19/62 that Reformer Revamp Sch. A would use all of the royalty credit.)

2

- Complete E. Reformer catalyst - condition, when need replacement, etc.
- Cancelled F. Economics of early reformer revamp.
- Complete 5. Initial instrumentation revisions.
- Complete A. Discuss work planned and problems that may be encountered.
- Complete B. Obtain list of safety controls on all engines (vibra switches, oil level controllers, etc.)

- | | |
|----------|---|
| Complete | C. Discuss instrument air system and work previously done by plant engineering group. |
| Complete | D. Obtain a copy of the report and the four instrument proposals on the boiler control system. |
| Complete | E. Obtain instrument air requirements, present and future. |
| Complete | F. Obtain copy of Clark Bros. proposal to install safety controls on engines at Compressor Station No. 1. |
| Complete | 6. Misc. information. |
| Complete | A. Obtain copy of detail plant plot plan. |
| Complete | B. Discuss electrical sub-station. How will transformers be modified for additional load? |
| Delayed | C. Report on steam condensate recovery. |
| Complete | D. Reformer hydrogen disposal. |
| Complete | E. Obtain and reproduce all key plant drawings. |
| Complete | F. Prepare "Master Plan Schedules" for plant takeover. |
| Complete | G. Electrical power failure problem. |

CMG/bam

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INTER-OFFICE MEMORANDUM

TO: W. R. Lucas
FROM: C. M. Grace
DATE: December 3, 1962
SUBJECT: November 30 Meet-
with Messrs. Wool-
folk and Shaw

On the afternoon of Friday, November 30, a meeting was held by Messrs. Lucas, Baker and Grace of U.T.P. and Messrs. Woolfolk and Shaw of Texas Gas.

The following items were discussed.

Plant Expansion Program

Mr. Lucas informed Mr. Woolfolk and Mr. Shaw that a decision had been made to one stage the plant expansion and modernization program. This is scheduled to be accomplished during the latter part of 1963. It was explained that one central control room is desirable and, if determined feasible, will be included in this program.

Plant Shutdown

Mr. Lucas stated that his latest information was that the plant is to be shut down on December 28. Downtime is estimated to be approximately one month. The earliest probable startup date is February 1. During this downtime U.T.P. plans to accomplish the following work:

1. Replace the reformer catalyst.
2. Accomplish initial instrumentation revisions (Boiler controls, engine safety controls, etc.).
3. Possible relocation of some existing equipment to allow for later plant expansion.

U.O.P Work

Since the Isomax Schedule A and subsequent equipment delivery are limiting in a one stage expansion, Mr. Lucas asked that this program be reactivated at once. Mr. Woolfolk is to contact U.O.P. so they can start scheduling people to resume work. A new basis for design of the Isomax consistent with the 8,500 BBL/Day condensate capacity will be prepared by Texas Gas and forwarded to U.O.P. U.O.P. is to complete the design work and prepare specifications for the reactor at the earliest possible date so quotes may be obtained and an order placed for this long delivery item. It will probably be two weeks after work is resumed before an estimated completion date is obtained for the Isomax Schedule A.

It has been assumed that U.T.P. will be able to get Gulf States to loop their line and thereby eliminate the frequent power failures. No provisions will

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be included in the Isomax or new reformer design for steam turbine driven spares to keep this unit on line in the event of a power failure. This matter should be discussed with Gulf States in the near future.

The Reformer Revamp Schedule A is presently based on a 4,350 BBL/Day charge. With the addition of a new 2,000 BBL/Day low pressure reformer, the charge rate to the existing reformer will be 3,600 BBL/Day. Mr. Woolfolk will have U.O.P. review their work and make the necessary revisions for the decreased charge rate so that savings may be realized from reduced heater and exchanger capacities. This package will be complete some time during the latter part of January.

Pace Work

Mr. Woolfolk and Mr. Shaw were informed that U.T.P. met with Pace Thursday afternoon, November 29, and requested that Pace review their work and prepare several alternate processing schemes. Pace was told that, where necessary, new equipment should be considered so that possible future plans are not blocked by isolated "bottlenecks" within the proposed plant expansion. Economy, efficiency, and flexibility are prime considerations. Any plot plan that will optimize control centralization should certainly be considered. Mr. Woolfolk was told that a meeting is tentatively set for Thursday, December 6, to review and discuss the Pace schemes. Preparation of the naphtha splitter package (due Monday, December 3) was cancelled.

New Low Pressure Reformer

Mr. Woolfolk was asked to prepare the basis for the new low pressure reformer, review it with U.T.P. and submit it to qualified licensors. It was agreed that it would be best to two phase the selection; first to select the process and second the contractor to prepare the Schedule A.

Reformer Catalyst Replacement

Texas Gas normally has both a U.O.P. service man and an inspector present when catalyst is replaced. Approximately two weeks notice is necessary to have the U.O.P. people present.

Initial Instrument Revisions

Bill Baker will go to Winnie the early part of this week to review the existing boiler instrumentation with Walter Neidert. Arrangements will be made to meet with repre-

sentatives from Republic and Hagan while at the plant. Republic and Hagan will be asked to update their previous proposals to include the more complete instrumentation package desired (similar to that of the Rayne, Louisiana plant).

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The engine safety controls have been reviewed. Clark Bros. will be contacted Monday, December 3, to update their previous proposal to include additional instruments.

Air compressor vendors will be contacted early this week for quotes on an instrument air compressor package.

Barge Condensate

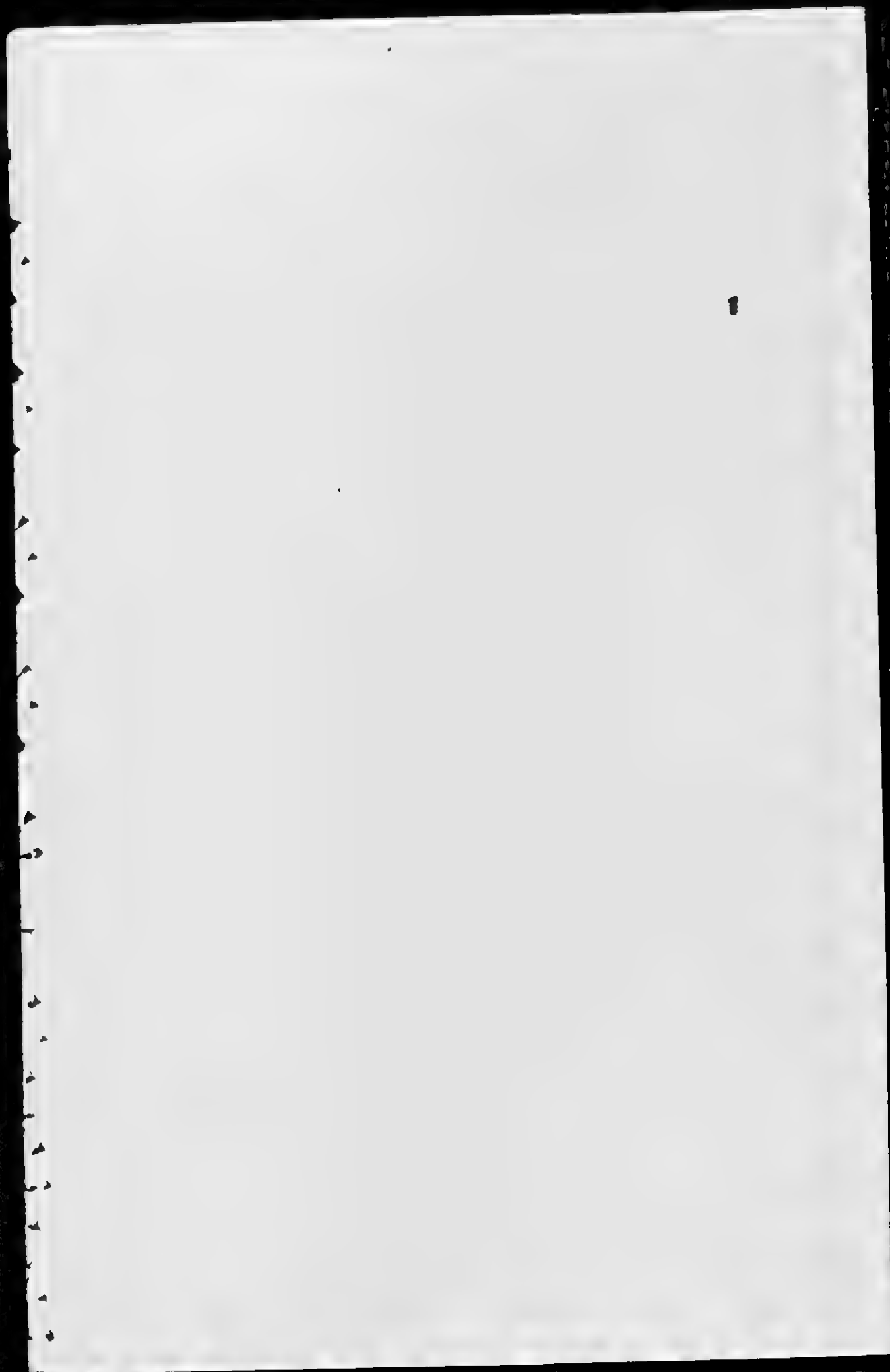
Mr. Woolfolk stated that Mr. Cordell informed him that receipt of barge condensate could be delayed for a month or so by having the supplier allow it to accumulate at their terminal points.

Product Supply Study

A complete summary of product supply capabilities during plan shutdown and the resulting economics is being prepared by Messrs. Woolfolk and Shaw. This summary will include all products produced at Winnie and will be complete Wednesday, December 5.

CMG/pks

cc: Messrs. W. A. Beman
J. A. Sutherland
H. G. Teverbaugh
E. P. Wilkinson



**BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD**

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,692

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL
UNION, LOCAL 4-234, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
AND

UNION TEXAS PETROLEUM, A DIVISION OF ALLIED
CHEMICAL CORP., INTERVENOR

On Petition to Review and Set Aside an Order of the
National Labor Relations Board

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 1 1966

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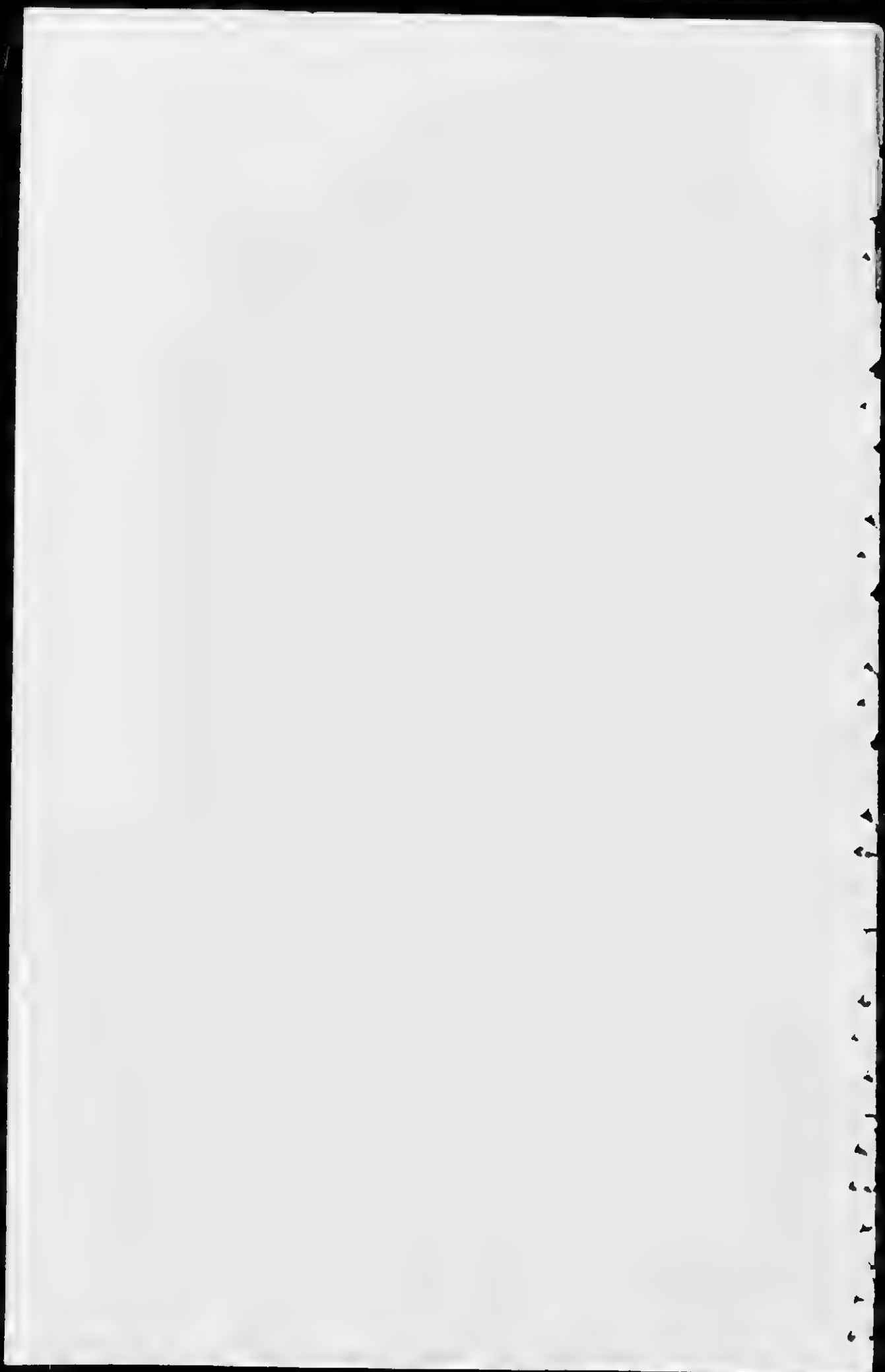
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NATIONAL LABOR RELATIONS BOARD, RESPONDENT
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UNION TEXAS PETROLEUM. A DIVISION OF ALLIED
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On Petition to Review and Set Aside an Order of the
National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD

COUNTERSTATEMENT OF THE CASE

This case is before the Court upon the petition of Local 4-234, Oil, Chemical and Atomic Workers International Union, AFL-CIO (herein "OCAW" or "the Union") to review and set aside in an order of the National Labor Relations Board issued pursuant to Section 10(c) of the National Labor Re-

lations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*). The Board's Decision and Order¹ are reported at 153 NLRB No. 71. This Court has jurisdiction under Section 10(f) of the Act.

I. THE BOARD'S FINDINGS OF FACT

The Board dismissed in its entirety a complaint against Union Texas Petroleum, a Division of Allied Chemical Corporation (herein "Union Texas" or "the Company"). The Board found that the Company, in taking over a plant containing a bargaining unit represented by the Union in a shut-down condition, did not cause the employees at the plant to be discharged in violation of Section 8(a)(3) of the Act and did not refuse to bargain with the Union in violation of Section 8(a)(5) of the Act. The underlying facts are as follows:

Allied Chemical is a New York corporation primarily engaged in the production and sale of chemical products, with approximately 200 manufacturing plants in the United States (Tr. 19-20, 74). In April, 1962, Union Texas Natural Gas Corporation was merged into Allied Chemical and became a corporate division called Union Texas Petroleum (Tr. 283).

¹ References designated "D&O" are to the Board's Decision and Order; those designated "TXD" are to the Trial Examiner's Decision; and those designated "Tr." are to the transcript of testimony.

Allied Chemical, in common with many other major chemical companies, is shifting from coal tar to petroleum as a base material for such products as synthetic fiber, synthetic detergents, rubber and plastics (Tr. 274, 456, 458). Petroleum is a source of aromatic chemicals, which are basic petrochemicals used in the manufacture of these products (Tr. 275).

In October 1962, the Board of Directors of Allied Chemical considered the acquisition for Union Texas of a small gasoline refinery and natural gas pipeline system located at Winnie, Texas, and owned by Texas Gas Corporation (TXD 6, Tr. 471-475). Allied Chemical did not propose to operate the gasoline refinery but intended to convert the plant, at an estimated investment of \$6,000,000, to the production of aromatic chemicals and upgraded gasoline (Tr. 473). It concluded that under the existing state of the gasoline market, a small gasoline refinery could no longer be profitable (Tr. 273-274).² By converting the plant to the production of aromatic chemicals, however, Union Texas would be in a position to supply other divisions of Allied Chemical with necessary basic petrochemicals (Tr. 521-523).

² The president of the Company testified that the Winnie plant had been financially carried by the pipeline operation for several years (Tr. 252). A financial analysis presented to the Company's Board of Directors in October 1962 indicated that the operations of Texas Gas were substantially profitable. This analysis, however, does not show that the plant operation alone was profitable but merely indicates that the overall operations of Texas Gas, including the pipeline, were profitable (Tr. 473).

On December 5, 1962, Allied Chemical entered into a purchase agreement with Texas Gas (G.C. Exh. 4, Tr. 293-294). The agreement provided for the conveyance of certain physical assets, including the gasoline plant at Winnie and nearby deep water terminal facilities at Port Naches, Texas. Also to be conveyed were the transportation system of Texas Gas and the stock of Texas Gas Pipeline Corporation, a wholly owned subsidiary of Texas Gas (G.C. Exh. 4). Cash on hand, accounts receivable, patents, trademarks, and tradenames were specifically excluded from the purchase. In addition, the agreement expressly provided that Allied Chemical would not assume any obligation under specified leases and contracts, including all collective bargaining contracts, employment contracts, or other agreements relating to insurance, pensions, savings plans, or other employee benefits (GC Exh. 4, Tr. 587-588). The agreement provided for the closing of the purchase on December 31, 1962.

The Company had planned originally to acquire the plant in a shut-down condition about December 28 and to commence alterations immediately thereafter (R. Exh. 66, Tr. 277, 614-615, 622, 756-757). In December 1962, the Company was informed by the technical director of its petrochemical section that further engineering studies were required and that it would not be possible to begin conversion of the Winnie plant as soon as had been anticipated (Tr. 476-477, 585-588, 758-759). The Company proposed to Texas Gas that the acquisition date be postponed

until sometime in February 1963, but Texas Gas, because of its tax position, insisted that bare title to the assets pass prior to midnight, December 31 (Tr. 251). Since the Company was not prepared to take over the plant by the end of the year, a contract was executed on December 28 providing that Texas Gas would continue to operate the plant after the passage of title on December 31 (G.C. Exh. 5, Tr. 83, 252-253, 276-277, 591-592, 759-761).

Under the contract, Texas Gas agreed to operate the plant, the terminal, and the pipeline system in return for the reimbursement of all costs plus a fixed fee of \$7,500 per month. The contract was to last until April 1, 1963, unless terminated earlier by either party. Texas Gas agreed to supply all personnel and to bear all responsibility as employer, including the payment of all employer's taxes. All work was to be planned by Texas Gas, and after approval of the plans by the Company, Texas Gas was to perform the work with complete control over means and methods and with complete freedom from supervision. Texas Gas was authorized to make necessary purchases up to \$500. All extraordinary costs were to be approved in writing by Allied Chemical. (GC Exh. 5.) The contract specifically provided that the plant would be closed for conversion upon termination of the contract and that Texas Gas would discharge all employees affected by the termination (GC Ex. 5).

At 11:59 p.m. on December 31, the sale of the assets was complete and the operating agreement went into effect (GC Exh. 4 and 5, 62-63). Although the operation of the plant, terminal, and pipeline facili-

ties were not assumed by the Company, it took over some administrative and staff functions, such as traffic, sales, legal counsel and accounting (Tr. 66, 300-301). A large number of employees who had performed these functions for Texas Gas were retained and were placed on the Company payroll (Tr. 65-66). Many of the clerical employees, however, were not needed and were not hired by the Company (Tr. 65-66). Traffic Manager R. C. Herrington was employed by the Company to do the same work he had performed for Texas Gas. Herrington worked with the sales department in routing finished products to customers and was not responsible for production work (Tr. 66-67, 106-107, 110-113, 300-301, 322-323, 518).

Responsibility for the operation and maintenance of the plant remained with General Superintendent R. T. Neville, Operating Foreman M. F. Krueger, Maintenance Superintendent J. C. Ellis, and Personnel and Safety Director Jesse Cating, all of whom continued to be employed by Texas Gas during the term of the operating contract (Tr. 225-226, 334-336, 351-354, 389). On January 1, the Company hired R. M. Woolfolk as a member of its engineering staff. Woolfolk had previously been Manufacturing Superintendent for Texas Gas. (Tr. 68).

On December 31, the Company sent Area Superintendent Clyde Quinn to the Winnie plant to serve as its representative for the approval of extraordinary expenditures (Tr. 639-640). Quinn was specifically instructed not to interfere with the operation

of the plant or the direction of the work force, which were to be exclusively within the control of Texas Gas (Tr. 282-293, 478-479, 640-642, 653-656, 707-708).

At the time of the sale of the Winnie facilities, the Union represented the production, operating, and maintenance employees at the plant and terminal pursuant to a collective bargaining agreement effective until March 16, 1963 (GC Exh. 6). Electricians and pipefitters were represented by separate unions (GC Exh. 4; Tr. 14-15). The office employees, truck-drivers, and pipeline employees were unrepresented (Tr. 100-101).

On December 22, 1962, the General Counsel of Texas Gas, Earl Elliott,³ and other representatives of Texas Gas met with representatives of OCAW and the two other unions to inform them that certain assets of Texas Gas were being sold to the Company and that in all probability an operating agreement would be executed under which Texas Gas would operate the Winnie plant and pipeline for an indefinite period not to exceed 90 days (Tr. 548-550). At the meeting, the representative of OCAW sought unsuccessfully to amend the collective bargaining agreement to make it binding on any successor or assignee

³ Although a letter from the Company to Texas Gas on December 31 indicated that the time spent by Elliott in connection with plant operations would, in general, be a reimbursable expense under the operating agreement, nothing in the record shows specifically whether or not Texas Gas was entitled to reimbursement or was in fact reimbursed for the time and expense involved in union negotiations.

of Texas Gas (R Exh. 13, Tr. 550-556). The OCAW representative also gave verbal notice to Texas Gas of the Union's intention to reopen the collective bargaining agreement for the purpose of wage negotiations (Tr. 558). On December 31, the Company sent a letter to Texas Gas asserting, among other things, that the operating agreement precluded Texas Gas from increasing wages without the approval of the Company (R. Exh. 17). In its letter of reply, Texas Gas pointed out that the agreement contained no limitation concerning wage increases and insisted that imposing any such limitation would require an alteration of the contract (R. Exh. 18).

In a letter dated January 1, 1963, the Union requested the Company to adopt its agreement with Texas Gas or to negotiate a new agreement covering the same employees (GC Exh. 8, Tr. 58-59).

On January 3, 1963, Elliott met again with representatives of OCAW and the other unions for the purpose of advising them that the sale of assets had taken place on December 31 and that the operating agreement had been finalized (Tr. 556-557). Another meeting was held on January 10 to discuss grievances which had arisen under the collective bargaining agreement with OCAW (Tr. 557-558). At the January 10 meeting, OCAW and Texas Gas signed an agreement concerning termination benefits for an employee who wished to leave his employment (R Exh. 16, Tr. 561-563). At both the January 3 and January 10 meetings, the Union pressed unsuccessfully its demand for a 5 percent wage increase (Tr.

566-567). In letters dated January 10 and 11, the Union provided Texas Gas with written notice of its intention to open the collective bargaining contract for wage negotiations (R Exh. 14 and 15, Tr. 559-560).

The Company answered the Union's January 1 bargaining request in a letter dated January 11. The Company explained that it had not assumed the obligations of the collective bargaining agreement and that Texas Gas remained the employer at the Winnie plant. The Company's letter also noted that the Union was currently negotiating with Texas Gas for a wage increase and that the Company planned to take maximum advantage of the utilization of its present employees in the final staffing of the plant. (GC Exh. 9, Tr. 59.)

Another meeting was held between Texas Gas and OCAW on February 7, 1963, at which the demand for a 5 percent wage increase was again discussed (Tr. 566). Although Texas Gas made alternative proposals, the Union continued its demand for a 5 percent increase and no agreement was reached (Tr. 567).

By February 14, the Company had nearly concluded a contract with Fluor Maintenance, Inc. to perform the construction and repair work necessary for the conversion of the plant (Tr. 248-252). On the morning of February 14, 1963, John Sutherland, the Company's general manager, met with Superintendent Neville and the other supervisory personnel at the plant and notified them that the operating con-

tract would be terminated that day and that the Company would take over at the end of the day, after the plant had been shut down and the hourly employees had completed their work (Tr. 121-123, 657-659). Only those facilities necessary to the operation of the pipeline were to be maintained (Tr. 657). Sutherland explained that the plant would remain shut down for extensive repairs, after which the Company would probably staff the plant with its own hourly employees (Tr. 123, 354, 657). To the supervisory personnel at the plant, Sutherland offered employment with the Company at their respective positions and salaries (Tr. 123, 659). In a telegram dated February 14, the Union requested the Company to bargain with it about the closing of the plant (GC Exh. 10). The Company again replied that it did not control the Winnie employees and had not assumed the collective bargaining obligations of Texas Gas (GC Exh. 11).

The operating agreement provided for 15 days notice of termination by either party and provided that Texas Gas would give "due and proper notice" to all employees affected by the termination (GC Exh. 5). In lieu of notice, the Company paid Texas Gas its operating fee for 15 days after February 14 and Texas Gas in turn gave its employees an extra week's wages as severance pay (Tr. 246-248, 569-572, R. Ex. 19-21).

During the month of December, 1962, Sutherland had made tentative plans to assemble approximately 35 hourly employees from other Company facilities to staff the Winnie plant (Tr. 662-663). The Company

had acquired at least one new plant each year over the past 10 years which it had staffed with employees from its existing plants (Tr. 710-711). Pursuant to Sutherland's instructions, between 35 and 50 employees arrived at the plant beginning the evening of February 14 (Tr. 137-139, 664-665). These employees had experience with plant shut-downs, which involve the danger of fires and frozen lines (Tr. 133, 664-665, 709-713).

On February 17, Sutherland decided that it was only necessary to maintain a skeleton force at the plant, so he kept 14 of the senior employees and sent the rest back to their former plants (Tr. 140, 665). Following the plant closing, no gasoline or other energy products were produced (TXD 15, Tr. 229, 610-611). Regular gasoline customers were supplied either out of storage or with gasoline bought and trucked in from outside sources (Tr. 177, 759-760). The plant remained in operation only to the extent necessary for the absorption of liquids from the gas sent through the pipeline (Tr. 249, 610-611). The 14 transferred employees patrolled the lines and performed whatever other work remained after operations were curtailed (Tr. 133, 664-665, 709-710). They were unfamiliar with the plant and were aided by the former Texas Gas supervisors, who worked 12-hour shifts for a few days after the shut-down (Tr. 189).

On February 21 the contract with Fluor Maintenance was concluded⁴ and about February 26 the

⁴ The signing of the contract was delayed until Fluor demonstrated to the Company that it had developed a "mutually

Fluor personnel began arriving at the plant (R. Exh. 9, Tr. 252-253, 536). Texas Gas had employed a maintenance crew of 23 to 25 men and had sometimes found it necessary to rely on subcontractors for new installations as well as routine maintenance, such as painting and insulating (Tr. 101-102, 337-339). The Fluor crew employed at the plant numbered about 70 after the first week and then rose to 90 for more than a month (Tr. 618, 636). As of the hearing date, June 28, 1963, Fluor had over 100 employees at the plant (Tr. 635-636). About the second week in March, the existing equipment was drained and depressurized for inspection (Tr. 611-614, 619). The inspection revealed serious deterioration requiring more extensive repairs and replacements than had been anticipated (Tr. 610-613, 681-686).

On June 3, 1963, some units were brought back into operation on a "pilot" basis (Tr. 271, 611). Although substantial operating and equipment changes had already been made, more significant changes were in progress and further alterations were planned for the near future (R. Exhs. 5 and 26, Tr. 464-466, 600-601). The Company staffed the reactivated operation exclusively with its own employees and former employees of Texas Gas (Tr. 696-698). All applicants were given comprehensive intelligence, mechanical aptitude, and personality tests under the

satisfactory basis" for obtaining the necessary labor. Fluor met this requirement by informing the Company that it had reached a project agreement with 10 AFL-CIO unions for the use of union journeymen at the plant. (R. Exh. 10, 11, 12, Tr. 538-542).

supervision of Dr. William Ford of the Psychological Service Institute, Houston, Texas (Tr. 718, 720, 723, 772-774). Sixty percent of the applicants from other Company plants passed the tests as compared with 35 percent of those formerly with Texas Gas (R. Exh. 61). Of the 37 hourly employees at the plant and terminal at the time of the hearing, 11 were former Union employees of Texas Gas (R. Exh. 67, Tr. 696-698).

II. THE BOARD'S CONCLUSIONS AND ORDER

On the foregoing facts, the Board concluded, contrary to the Trial Examiner, that the Company did not refuse to bargain with the Union in violation of Section 8(a)(5) of the Act and did not discriminate against the Union employees at the plant in violation of Section 8(a)(3) of the Act. In reaching its conclusion, the Board found that the Company was not an employer or co-employer of the employees at the plant prior to the shut-down on February 14, 1963. The Board also found that the Company took over the plant in a shut-down condition for legitimate business reasons and not for anti-union reasons.

SUMMARY OF ARGUMENT

I. The Board reasonably determined that the Company was not an employer at the plant prior to the shut-down on February 14, 1963, and, therefore, that it did not unlawfully refuse to bargain with the Union. Under the operating agreement, Texas Gas was an independent contractor because it managed, super-

vised, and controlled the working force and because it furnished the Company with the results of the work performed while retaining autonomy over means and methods. During the term of the operating agreement, the representatives of the Company merely approved extraordinary expenditures as provided by the agreement and did not interfere with the status of Texas Gas as an independent contractor.

II. The Board properly determined that the record did not support a finding that the plant was closed down and the production and maintenance employees laid off to avoid bargaining with the Union. The Company negotiated and completed the purchase of the Winnie assets with the fixed plan to acquire the plant in a closed condition so that conversion work could be promptly started. The operating agreement was entered into to maintain the *status quo* until the Company was ready to begin conversion of the plant. The Company terminated the agreement when it was ready to begin conversion. The record does not warrant the Trial Examiner's findings of a discriminatory design to shut down the plant in order to bring in non-union replacements for the union men at the plant and so to avoid bargaining with the Union.

III. The Board has adequately explained its decision. The record shows a business determination by the Company to take over the plant in a shutdown condition in order to begin conversion operations. The Board has fully explained its reasons for finding that the Company executed an operating agreement con-

sistent with this determination. In so finding, the Board has removed the basis for the Trial Examiner's inference of a "discriminatory design" to take over the plant in a shutdown condition in order to replace the union men at the plant with non-union men. It was therefore unnecessary for the Board to consider in detail other aspects of the Trial Examiner's reasoning based upon his assumption that the Company intended to resume full-scale production at the plant with non-union replacements.

ARGUMENT

Section 10(c) of the Act requires the Board to dismiss a complaint unless it finds that a preponderance of evidence supports the alleged unfair labor practices. The burden is on the General Counsel to supply the necessary preponderance of evidence. *American Flint Glass Workers Union of North America v. N.L.R.B.*, 97 App. D.C. 244, 248, 230 F. 2d 212, 216, cert. denied, 351 U.S. 988; *N.L.R.B. v. Moore Dry Klin Co.*, 230 F. 2d 30, 32-33 (C.A. 5); *Lawson Milk Co. v. N.L.R.B.*, 317 F. 2d 756, 760 (C.A. 6). Where, as in the present case, a party petitions to review the Board's dismissal of a complaint, the petitioner must show that "the evidence required the Board to uphold the claim" (*Amalgamated Clothing Workers of America v. N.L.R.B.*, 118 App. D.C. 191, 334 F. 2d 581) or that the Board's conclusion "has no rational basis" (*International Woodworks of America, Local Unions 6-7 and 6-122 v. N.L.R.B.*, 105

App. D. C. 37, 39, 263 F. 2d 483, 485).⁵ Petitioner has made no such showing here.

I. Substantial Evidence on the Whole Record Supports the Board's Finding That the Company Was Not a Co-employer of the Gasoline Plant Workers Between January 1 and February 14, 1963

The Board found that Texas Gas, not the Company, was the employer at the plant until it was closed down on February 14 and therefore that the Company was under no obligation to bargain with the Union.⁶ The status of Texas Gas as an independent contractor is clear, both in the terms of the agreement between Texas Gas and the Company and in the manner in which the agreement was followed.

As shown by the statement, *supra*, p. 4, only the bare title to the assets of the Winnie plant passed to the Company on December 31, 1962. After the passage of title, Texas Gas continued to operate the plant pursuant to the operating agreement. The agreement provided that Texas Gas would operate the plant as an "independent contractor." It was agreed

⁵ See also, *International Woodworkers of America, AFL-CIO v. N.L.R.B.*, 104 App. D.C. 344, 262 F. 2d 233, 234; *International Union, United Automobile, Aerospace and Agricultural Implement Workers v. N.L.R.B.*, App. D. C. , 345 F. 2d 516.

⁶ There is no allegation that Texas Gas, as purchaser of the plant, succeeded by operation of law to any obligations under the existing collective bargaining agreement or under the existing certification of the Union. At the hearing, the General Counsel specifically disavowed reliance on any such theory (Tr. 37-39).

that the Company was contracting "solely for the results" of the work and that Texas Gas was to perform the work "free of control or supervision . . . as to means and methods." Texas Gas agreed to "supply all personnel," to bear "full responsibility as employer for all employees," and to "pay all employer taxes." The contract provided that all persons engaged in the operation of the plant were to be "solely the servants and employees" of Texas Gas. (G.C. Exh. 5.)

During the period in which the operating agreement was in effect, the relationship between the Company and Texas Gas conformed entirely with the terms of the contract. General Superintendent Neville and the other top supervisors of Texas Gas continued to be responsible for production, maintenance, safety, and personnel policy. Texas Gas retained the power to hire and discharge employees, so long as the number of hourly employees did not exceed the maximum provided by the contract. Although the Company asserted the right to approve wage increases, Texas Gas correctly insisted that its power to set wages was not limited by the contract. In the 6 weeks during which the operating agreement was in effect, Texas Gas had 3 meetings with the Union at which the Union's demand for a wage increase was discussed. The Union and Texas Gas also discussed grievances under their collective bargaining contract and agreed upon termination benefits for an employee who wished to leave his employment.

In short, Texas Gas controlled hiring, discipline, supervision, wages, and work assignments. The Com-

pany contracted for the results of the work, and Texas Gas was left with complete freedom over means and methods. Thus, under settled law, Texas Gas was an independent contractor, not an agent, and was the sole employer of the Winnie employees. Cf., *N.L.R.B. v. Howard Johnson Co.*, 317 F. 2d 1, 3 (C.A. 3), cert. denied, 375 U.S. 920; *N.L.R.B. v. Norma Mining Corp.*, 206 F. 2d 38, 40 (C.A. 4); *Continental Bus System, Inc. v. N.L.R.B.*, 325 F. 2d 267, 271 (C.A. 10).

Despite the Union's contentions to the contrary, the presence of Clyde Quinn at the plant as the Company's representative was entirely consistent with the operating agreement and did not detract from the status of Texas Gas as an independent contractor. Quinn was told by General Manager Sutherland that he was to be stationed at Winnie "for the sole purpose of okaying invoices and bills presented at the plant." Quinn was instructed to "observe but not to have anything to do with the operation" (J.A. 640-642).

The Board found that Quinn, in conformity with the operating agreement, only passed on expenditures in excess of \$500 (D & O 3). The Trial Examiner's contrary finding that Quinn passed on all expenditures regardless of amount is not supported by the record. Although Neville testified that he was instructed by the president of Texas Gas to obtain Quinn's approval of all repairs and purchases other than normal maintenance (Tr. 103, 175-176), the record shows no specific instances in which Quinn approved expenses of less than \$500. In fact, the only

only
any

items which the record shows that Quinn approved involved substantial repairs or replacements. Quinn approved the repairing of a condensor, which was done by a subcontractor, and the repairing of a pump, which had to be sent out of the plant (Tr. 116-118, 346). Neville invited Quinn to a conference of department heads on January 11 to decide whether to proceed with some major repairs involving considerable expense. Quinn suggested that some of the more costly projects be deferred. After checking with his superiors, Quinn told Neville to go ahead with the projects (Tr. 119-120, 228-229, 641-642).

Apart from the foregoing instances of approving repairs, the record contains no other evidence of specific exercise of authority by Quinn.⁷ Neville testified generally that Quinn gave orders to the maintenance superintendent, personnel director, and one of the foremen (Tr. 105). No evidence was adduced, however, as to the nature of Quinn's "orders" and nothing in the record shows that Quinn's specific contacts with these men involved matters other than those which required his approval under the operating agreement. There is no evidence that Quinn was in any way concerned with the assignment or supervision of work, the disciplining of employees, the disposition of complaints or grievances, or the negotiations for a wage increase.

⁷ In one instance, Quinn called the attention of Plant Superintendent Albritton to some loose boards between two tanks and suggested that they be removed (Tr. 341). Quinn's suggestion to remove the hazard was only natural in view of the Company's liability under the contract for claims not covered by insurance (G.C. Exh. 5).

Nor did the conduct of Company Traffic Manager Herrington affect the status of Texas Gas as an independent contractor. As a member of the sales department, he gave instructions concerning the routing of finished products. Herrington was not responsible for the loading of products by the rackmen and normally sent his instruction through the appropriate shift foreman (Tr. 297, 322-324). Although he occasionally inspected the containers in which products were to be shipped to customers (Tr. 304-305), there is no evidence that these inspections were part of his regular duties or responsibilities. In many instances, Herrington transmitted routing orders by telephone or by memorandum (Tr. 113, 322-323). The question of who was authorized to give orders to the rackmen arose at the January 10 grievance meeting. The rackmen had complained about receiving orders from the Laboratory Superintendent as well as from the rack foreman, while their job duties prescribed that they were responsible to the foreman. The attorney for Texas Gas agreed that the complaint was justified and that the Laboratory Superintendent would have to route his requests through the shift foreman. Herrington's name was not mentioned at the meeting (Tr. 560-561).

In view of the foregoing, we submit that the Board properly concluded that the Company was not a co-employer or joint-employer during the term of the operating agreement.

II. Substantial Evidence on the Whole Record Supports the Board's Finding That the Gasoline Plant Was Shut Down and Production and Maintenance Employees Terminated on February 14, 1963, for Legitimate Business Considerations and Not for Anti-Union Reasons

This case does not involve, as the Union contends, a substitution *en masse* of inexperienced non-union men for trained union refinery workers. Before its sale of the Winnie plant to the Company, Texas Gas employed a maintenance crew of 20-odd men. Maintenance work at the plant after the February 14 shutdown was performed entirely by men referred by AFL-CIO unions to the maintenance contractor who was assigned the first steps in the Company's program to renovate and convert the plant from an ordinary gasoline refinery to a plant producing petrochemicals and higher octane gasoline. The competence of the men employed by the maintenance contractor, Fluor Maintenance, Inc., for this work is not in question. Fluor's work did not affect operations involving the processing of natural gas. As the 14 men assigned to this processing work came from the Company's natural gas plants, there is no reason to suppose that they required more than minimum training to familiarize themselves with the similar operations at the Winnie plant.⁸ Finally, in restaffing the modified plant in June 1963, the Company employed 11 union men and 12 employees from its

⁸ Their employment at the Winnie plant comports exactly with the Company's statement to the Union on January 11 that it planned to make "maximum utilization" of its present employees at the Winnie plant (*supra*, p 9).

other plants who had passed tests on mental ability, mechanical aptitude, and personality traits. It is not claimed that these tests were not fairly administered and graded. There is, accordingly, no reason to question the fitness of the 12 transferees for work at the modified plant.

What is actually involved in this case is a *charge* that the Company shut down the plant on February 14 *intending* to resume full-scale operations with non-union replacements for the union men at the plant. Had the Company done so, this case would be comparable to the mass substitution of non-union employees for union employees in the *Piasecki* and *New England Tank* cases⁹ cited by the Union (Brief 35-38), and an inference of discriminatory motivation might be proper.

In the present case, however, the record shows that the Company purchased the Winnie plant from Texas Gas to convert it from a gasoline refinery to a plant producing petrochemicals and high octane gasoline, that it delayed taking over the plant until had nearly completed arrangements with Fluor to renovate the plant, and that it transferred 14 employees to the plant to perform miscellaneous jobs, while the plant's facilities were being modified by Fluor. The Company's actions on their face comport with normal business practice and therefore, unlike the substitution situations in *Piasecki* and *New England Tank*, warrant no inference of discriminatory motivation.

⁹ *Piasecki Aircraft Corp. v. N.L.R.B.*, 280 F. 2d 575 (C.A. 3), cert. denied, 364 U.S. 933; *N.L.R.B. v. New England Tank Industries, Inc.*, 302 F. 2d 273 (C.A. 1), cert. denied, 371 U.S. 875.

N.L.R.B. v. Kingsford, 313 F. 2d 826, 829 (C.A. 6);
N.L.R.B. v. Neiderman, 334 F. 2d 601, 604 (C.A. 2);
N.L.R.B. v. New England Web, Inc., 309 F. 2d 696,
700 (C.A. 1).

The Union contends, however, that the Trial Examiner properly inferred that the Company's actions were motivated by a "preconceived plan" to avoid bargaining with the Union by replacing the union operating employees at the plant with non-union employees. The Union argues in support of its contention: (1) The Company originally planned to take over the plant in a shutdown condition on January 1, 1963, and resume full-scale operations promptly thereafter with its own non-union employees; (2) the Company was not ready to operate the plant with its own employees when title passed on December 31, 1962, and so entered into a "sham" operating agreement with Texas Gas to gain time to assemble replacements for the union men at the plant; and (3) the plant was prematurely shut down on February 14, 1963, in order to effect a substitution of non-union men for the union operating employees. We show below that the Board properly determined that the record does not support the Union's claim of discrimination against its members.

We note preliminarily that nothing in the record indicates that the unorganized status of the Company's other plants is attributable to unfair labor practices by the Company,¹⁰ or that the functions of

¹⁰ An examination of the Board's records reveals no previous unfair labor practice complaints issued against the

the unorganized Texas Gas employees were affected by the closing down and renovation of the plant.¹¹ Accordingly, no special significance attaches to the non-union status of the Company employees transferred to the Winnie plant or to the Company's hiring of the unorganized Texas Gas employees.¹²

A. The claim that the Company's original shutdown plans were discriminatory

The Union asserts (Brief 6-7) that the Company originally planned to have all Texas Gas employees out of the refinery 4 days before taking over the plant on January 1, 1963, and to resume operations after a training period with non-union employees from its other plants. The testimony of General Manager Sutherland and Vice-President Teverbaugh cited by the Union in support of its position (Brief 7), reveals no Company plan for such a mass substitution of employees. Texas Gas employed about 87 operating employees at this time. Sutherland testi-

Company at any of its plants. Nor do the records indicate that any complaints were issued against Union Texas Natural Gas Corporation, as the Company was named prior to its merger into Allied Chemical.

¹¹ The Company supplied regular customers with natural gas and gasoline while the plant was shut down. Thus, the work of the sales, traffic, and clerical employees continued in spite of the curtailment of production. The sales department had the added burden of obtaining gasoline from outside sources to replace that which had been produced at the plant (J.A. 177).

¹² Many of the clerical employees were not needed and were not hired by the Company (J.A. 65-66).

fied that he planned to bring 35 "surplus" employees into "a cold plant" (Tr. 663).¹³ According to Teverbaugh, the Company postponed taking over the plant in a shutdown condition on January 1, 1963, "because the engineering was not far enough along for us to move in to start the construction and modification work in the plant" (Tr. 759). Nothing in either man's testimony indicates that the Company planned to resume normal, full-scale operations at the plant. Indeed, the 35 employees referred to by Sutherland were clearly inadequate for such purposes.

The *Piasecki* and *New England Tank* cases cited by the Union in support of its position (Brief 37-38), are, therefore, clearly distinguishable on their facts. *Piasecki* involved a simple transfer of ownership where the purchaser locked out the seller's union employees and promptly resumed operations with non-union replacements. In *New England Tank*, the successful bidder for operation of a Government-owned gasoline pipeline similarly effected an immediate and mass substitution of non-union for union employees. Such conduct absent satisfactory evidence of a legitimate business justification clearly warranted an inference of discriminatory motivation. No such inference of an *en masse* discrimination follows from the Company's stated intention to use its own employees to perform miscellaneous tasks at the Winnie plant during its renovation by an outside contractor.

¹³ Sutherland's testimony concerning the staffing of the plant after the February 14 shutdown is considered *infra*, pages 27, 28

B. *The claim that the operating agreement was a "sham" and a "discriminatory maneuver"*

The Union claims that the Company entered into a "sham" operating agreement with Texas Gas, effective January 1, 1963, in order to assemble non-union replacements for the union employees at the plant. We have shown in Part I of this Argument that Texas Gas performed genuine managerial functions for the Company under the agreement. There is accordingly no substance to the Union's assertion (Brief 42) that the operating agreement was a sham and that the Company paid Texas Gas \$7,500 a month "for no apparent reason other than to keep the union employees "on the seller's payroll and off the [Company's]." Moreover, it is undisputed that the Company did not execute a contract with Fluor for the repair and renovation of the plant until February 21, 1963. As we show below, pages 29-30, the Fluor contract was not itself a "discriminatory maneuver." The Company's decision to maintain the *status quo* by means of an operating agreement rather than to operate the plant itself until Fluor should arrive on the job thus warrants no inference that the Company was stalling for time to obtain replacements for the union men employed by Texas Gas.

C. *The claim that the shutdown of February 14 was discriminatorily motivated*

The Union contends that the Company closed the plant down on February 14, 1963, as a cover to effect a discriminatory replacement of "experienced refin-

ery workers who were union members . . . with inexperienced, non-union transferees" (Brief 42). In support of its contention, it principally argues (Brief 41-43): (1) General Manager Sutherland's testimony shows that the Company brought in 40-50 replacements for the production employees at the refinery "with the intention of promptly resuming full operations," and (2) the Fluor contract for the preliminary repair and renovation of the plant was a device to get rid of the maintenance employees at the refinery.

1. The record does not support the Union's assertion that Sutherland's testimony discloses that the Company intended to resume full production at the plant with non-union replacements. Sutherland testified that he had originally planned to bring 35 operators "into a cold plant" on January 1, 1963, and that, upon receiving orders on February 13 to shut down the plant, he "sent out word for these thirty-five men to report to the plant" because he "felt that these thirty-five men would be desirable in the plant for any contingency that might develop." Sutherland explained that the Company's "immediate plans for start-up or extended shutdown . . . were not firm" and that "this was cold weather. Freeze-up conditions could arise. A fire could start." (Tr. 662-666.)

Sutherland further testified that it was decided at a management meeting on Sunday, February 17, not to reopen the plant but to maintain the plant in a shutdown condition because the Company was "far enough along" with its Fluor contract and its engi-

neering plans so that it would not be worthwhile "to bring on any facilities . . . until such time as we could bring Fluor in and get the program under way." Sutherland, accordingly, returned to the plant, retained 14 "senior men" to perform miscellaneous functions not affected by the shutdown, and sent the other men back to their home plants (Tr. 664-665, 713-714).

Sutherland's explanation for his decision to staff "a cold plant" with a relatively small crew of operating employees from the Company's other plants manifestly warrants no inference that the Company intended to resume full production at the plant. Nor is such an inference warranted by the actual bringing in of 40 to 50 employees to take over the plant. The Union suggests (Brief 42-43) that the Company intended to maintain production with these employees and to get along without a crew of maintenance employees until the Fluor employees arrived to displace these union men, but that it changed its mind about resuming production operations because such action would have revealed the shutdown as a "discriminatory maneuver" to get rid of the union men at the plant. The Union apparently bases its speculation on Sutherland's telling Texas Gas General Superintendent Neville that he had sent most of the 40-50 men back to their home plants because there had been a "mixup . . . somebody jumped the gun and got them in too early. They might get in trouble by having the men there so early" (Tr. 141). Although Sutherland's remarks have no direct anti-union connotation, the

Union attempts (Brief 3) to put such a connotation on them by referring to a later conversation between Neville and Sutherland in which Sutherland commented that the Company "had no unions" at any of its plants. As this second conversation occurred in *April*—almost 2 months after the shutdown (Tr. 147)—it is totally inadequate to support the Union's interpretation of Sutherland's prior remarks to Neville.

In view of the foregoing, we submit that the record does not support the Union's claim that the Company intended to resume full operations at the plant after an *en masse* substitution of non-union employees for the union production employees.

2. There is also no record support for the Union's claim that the Fluor contract was a device to get rid of its members on the Texas Gas maintenance crew. The Company allocated \$6,000,000 for the renovation and conversion of the Winnie plant. The Fluor contract covered the first steps in this project. As the Union concedes (Brief 5, n. 4), during an initial 4-month period beginning February 26, 1963, the Fluor employees repaired and modified defective equipment, installed automated controls, and prepared the plant for heavy construction. After the first week on the job, Fluor had at least 70 men on the job. At the time of the Board hearing in the case, June 28, 1963, Fluor had over 100 employees at the plant. The Fluor operations were therefore far beyond the capacity of the 23 maintenance men previously employed by Texas Gas. In these circumstances, we submit, the Company's failure to employ the

Texas Gas maintenance men warrants no inference of discrimination.¹⁴

* * * *

In sum, it is the Union's position that the Company should have taken the plant over on January 1, 1963, hired the Texas Gas production and maintenance employees, and kept the plant in operation at least until the major task of converting the refinery to a petrochemicals plant was undertaken. Although this procedure perhaps might have been followed by the Company, the record shows that it had no interest in operating the refinery for the production of low octane gasoline and that it was concerned only with its renovation and conversion. The operating agreement with Texas Gas, and the contract with Fluor for the performance of maintenance work much beyond the capacity of the Texas Gas maintenance crew, thus served the Company's legitimate business interests.¹⁵ In these circumstances, we submit, the Board proper-

¹⁴ The Union purports to see discrimination in the Company's use of employment tests and its hiring of only 11 union applicants in its initial restaffing of the plant in June 1963. The hiring of these 11 men and 12 employees from the Company's other plants brought the production and maintenance crew to a total of 37. Had the Company actually been intent on keeping the Union from attaining majority status, it hardly would have employed almost one-third union members, so putting the Union in a favorable position to conduct a successful organizing campaign.

¹⁵ As Fluor employees began work at the plant within 12 days of the shutdown, there is no foundation for the Union's claim that the Company left the plant idle unnecessarily for a month to conceal a discriminatory purpose in closing down on February 14 (Brief 42-43).

ly concluded, contrary to the Trial Examiner, that the shutdown of the plant on February 14 and the layoff of the production and maintenance employees were not motivated by a desire to avoid bargaining with the Union.

III. THE BOARD ADEQUATELY EXPLAINED ITS DECISION

The Board found that the Company intended at all times to take over the Winnie plant in a shutdown condition in order to proceed with conversion work, that it executed an operating agreement with Texas Gas because it was not ready to proceed with conversion work when title passed, and that it had Texas Gas close down the plant and lay off the production and maintenance employees when it was prepared to go ahead with its conversion plans (Dec. 2-3). It found no evidence in the record to support the Trial Examiner's findings that the operating agreement and shutdown were Company maneuvers to avoid an obligation to bargain with the Union by effecting a mass substitution of non-union employees for the union workers at the plant. The Board, accordingly, concluded that "the parties to the sale consummated their bargain in the manner bargained for and with the legitimate business interests of both in mind" (Dec. 3).

The Trial Examiner's finding of discrimination against the union employees is essentially predicated upon his finding that the operating agreement was a "sham" calculated to gain time to assemble replacements for these employees, for without this finding

there is no substantial support for his inference that the Company intended to resume full-scale operations at the plant after a short period of training non-union replacements (*supra*, pp. 23-29). The Board's reasons for finding that the Company was not a joint or co-employer with Texas Gas, and that Texas Gas did not act as the Company's agent, under this agreement are fully explicated in its decision (Dec. 2-3). Implicit in this finding is the Board's rejection of the Trial Examiner's view that the agreement was a "sham" and a "discriminatory maneuver." Accordingly, it was unnecessary for the Board to consider in detail other aspects of the Trial Examiner's reasoning based upon his assumption that the Company had from the outset a "discriminatory design" to take over the plant in a shutdown condition in order to resume full-scale production at the plant with non-union replacements.

In view of the foregoing, we respectfully submit that the Board adequately explained the basis for its decision.

CONCLUSION

For the reasons stated, the petition to review should be denied.

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January 1966.

REPLY BRIEF FOR PETITIONER

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,692

OIL, CHEMICAL AND ATOMIC WORKERS INTER-
NATIONAL UNION, LOCAL 4-243, AFL-CIO,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*
ALLIED CHEMICAL CORPORATION, *Intervenor*

On Petition to Review and Set Aside an Order of the
National Labor Relations Board

CEIS

U.S. COURT OF APPEALS 1 Circuit

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REPLY BRIEF FOR PETITIONER

I. THE AUTHORITIES ARE NOT LEGALLY DIS-
TINGUISHABLE.

Ignoring the *Phelps-Dodge* predicate of *Piasecki* and
New England Tank—that discrimination in staffing illegal-

ly discourages unionism—the Board’s brief would distinguish them away on the ground that this was not an “en masse” substitution (Br. pp. 21, 22, 24-25, 28) inasmuch as the Company did not fill *all* the jobs because it did not plan to resume “normal full scale operations” after the shutdown. But if avoidance of collective bargaining was a motivating factor in selection of the personnel, contemplated reduction of force or of output is an irrelevancy. For it is well settled that a discriminatory standard of selection victimizes all union applicants, even if there are insufficient jobs for all.¹ *Brown and Root, Inc.*, 99 NLRB 1031, 1046, enf’d, 203 F.2d 139, 147 (8 Cir.); s.c. 311 F.2d 447, 454, 456 (8 Cir.); *Luzerne Hide and Tallow Co.*, 89 NLRB 989, 1009, enf’d *sub. nom. NLRB v. Clausen*, 188 F.2d 439 (3 Cir.), cert. denied, 342 U.S. 868; *NLRB v. Reed & Prince Mfg. Co.*, 130 F.2d 765, 768 (1 Cir.); *W. C. Nabors Co.*, 134 NLRB 1078, 1088, enf’d as modf’d on other grounds, 323 F.2d 686 (5 Cir.); *New England Tank Industries, Inc.*, 147 NLRB 598, 600.²

¹ The joint appendix having become available prior to preparation of this brief, for the convenience of the Court record references herein are made to it as well as to the pages of the transcript. The Joint Appendix references are designated “I J.A.”, “II J.A.” and “III J.A.”, followed by “Tr.” references.

² We therefore consider frivolous intervenor’s attempt (Br. pp. 8, 10, 11-12, 14, 27-29), in which significantly, Board counsel does not join (cf. Bd. Br. p. 22), to torture excerpts from statements of counsel for the General Counsel into abandonment of the mass discriminatory refusal to hire theory, which both petitioner’s charges (Int. Br. p. 50) and the complaint (II J.A. 4, par. 8), alleged, which intervenor concedes was fully litigated (Br. pp. 8, 12, 30), which counsel for the General Counsel articulated (I J.A. 83, Tr. 38), which the Trial Examiner attributed to him (I J.A. 9, I. R. 3), and on which the Examiner specifically predicated findings (I J.A. 47, 55-56, I.R. 21, 25). In the excerpt from the transcript quoted on page 29 of intervenor’s brief, counsel for the General Counsel distinguishes between “specific acts of individual dis-

Since the inevitable consequence of the Company's re-staffing policy was to oust the Union, reduction of force or production—like projected conversion to petrochemicals—could not possibly dissipate its discriminatory implications or rebut the presumption of discriminatory motivation. Therefore, even if the Board itself, rather than merely its counsel, had attempted so to distinguish the cases "on their facts" (Br. p. 25), the decision would have to be reversed. "More than enumeration of factual differences between cases is required; the Commission must explain their relevance to the purposes of the Act." *Burinskas v. NLRB*, No. 18,054, decided February 1, 1966, slip op., p. 9, n. 5. .

II. THE FACTUAL PREMISES OF THE OPPOSITION ARE FALSE.

Moreover, Board counsel is in error in asserting (Br. p. 25), that a production force of 35, the number Sutherland originally contemplated (I J.A. 307-308, Tr. 662-663; III J.A., Co. Ex. 66, p. 6, item 11) or 37, the number actually employed when production was in fact resumed in June (I J.A. 325, Tr. 697), in contrast to the previous one of 56 (Int. Br. p. 8), would have been "clearly inadequate" for "normal, full scale operations." As the Trial Examiner noted (I J.A. 30, I.R. 13, n. 39), in planning the size of the complement, Sutherland had the advantage of "several detailed staffing studies" which had been made as "a result of the strike at the Winnie Plant and subsequent operations with a minimum work force" (II J.A. 97, par.

crimination [against] * * * certain employees" and "a blanket charge of unlawful discrimination [against all of] * * * these employees." disavowing only the former, as his subsequent remarks which intervenor omits (I J.A. 132-133, Tr. 222, 224, 225) additionally confirm.

8, Co. Ex. 66, p. 2). Thus, displacement of the union adherents simply enabled the Company to effectuate a contemplated reduction of force unilaterally, without bargaining with the Union. That "operations were carried on successfully with a reduced work force * * * proves only that [the Company] realized an economic dividend from its anti-union activity." *NLRB v. Biscayne Television Corporation*, 337 F.2d 267, 268 (5 Cir.); *New England Tank Industries, Inc.*, 147 NLRB 598, 600-601.

Board counsel treats as datum (Br. p. 25) the Company's "stated intention to use [the 40-50 importees only] to perform miscellaneous tasks * * * during * * * renovation by an outside contractor," although that "statement" is actually the discredited testimony of "discredited" (I J.A. 51, I.R. 23)³ witness Sutherland (Bd. Br. p. 27), which the Examiner found "quite effectively contradicted" (I J.A. 32, I.R. 14) even by other *Company* witnesses (*ibid.*, n. 45; I J.A. 57, I.R. 25; I J.A. 298, Tr. 646, I J.A. 287-288, Tr. 623-625; I J.A. 111-113, Tr. 138-141). The Board itself, let alone its counsel, is not empowered to reverse such a credibility resolution "without a very substantial preponderance in the testimony as recorded." *NLRB v. Universal Camera Corp.*, 190 F.2d 429, 430, 432 (2 Cir.); Pet. Br. p. 40. Yet the Board's decision does not even address itself to this finding of the Examiner, and Board counsel and intervenor (Br. p. 36), simply ignore the contradicting testimony—that they were imported to operate the plant—which the Examiner credited.

Board counsel's argument (Br. pp. 23, 27-28) that the 40-50 importees were insufficient to operate the plant immediately after the shut down, not only ignores the fact

³ I J.A. 25, I.R. 10-11, n. 24; I J.A. 27, I.R. 11-12, n. 28; I J.A. 28, I.R. 12, notes 30, 34.

that 37 actually operated it in June, but also the demonstrated ability of the supervisory staff alone to operate the plant when necessary (II J.A. 96, Co. Ex. 66, p. 2, item 8).

III. THE DAMAGING ADMISSIONS CANNOT BE DISCARDED.

Board counsel's justification for discarding Sutherland's contemporary admission that the real reason for sending the new men home was to avoid "trouble," namely, that his statement has no "direct anti-union connotation" (Br. p. 28), overlooks that the only possible source of "trouble" was the *Piasecki-New England Tank* rule, which the Union had already invoked (II J. A. 1, GC Ex. 1A, Attachment "B", II J.A. 42, GC Ex. 8, p. 2), and which Board counsel concedes (Br. p. 22), the Company had reason to fear. No other interpretation was suggested by Sutherland on the witness stand, and, indeed, no other has ever been offered.

Similarly, Board counsel's reason for discarding Sutherland's observation that the Company "had no unions" at any of its plants (Br. 29)—it occurred two months after the new crew was sent home—overlooks that the significance of the remark lies in revealing the Company's concern with unionization, rather than explaining merely the precipitous return. Intervenor's argument (Br. p. 31) that Sutherland's reference to the projected result of the tests did not reveal union animus depends on omitting from its quotations the testimony that Sutherland was "actually talking about the people who were laid off, * * * [t]he union boys" (I J. A. 129, Tr. 191-192).

Disregard of such damaging out of court admissions, un-
denied and unexplained by the witness, would itself be

grounds for reversal, even if the explanations invented by Board counsel had been offered by the Board itself. Cf. *Fruit and Vegetable Packers & Ware. Local 760 v. NLRB*, 114 U.S. App. D.C. 388, 390-391, 316 F.2d 389, 391-392. If the implications of Sutherland's statements were less clear, the Trial Examiner's inferences would still be entitled to stand. As Judge Friendly recently said for the Second Circuit, where the issue is what "inference [is] reasonably to be drawn from conduct not in serious dispute * * * observation of the witnesses is likely to give a more accurate feel than reading a cold record; something would depend on what manner of man * * * [Sutherland] was, and whether * * * [his testimony] carried true conviction." *NLRB v. Majestic Weaving Co.*, 61 LRRM 2132, 2135 (2 Cir.), decided January 4, 1966.

IV. THE EVIDENTIARY CONFLICTS AND CREDIBILITY RESOLUTIONS CANNOT BE IGNORED.

Intervenor simply ignores (Br. pp. 3-4, 6-8, 27, 30, 36-37) the Trial Examiner's findings, undisturbed by the Board, that delay in engineering studies does *not* account for postponement of takeover by the Company or for the operating contract (I J. A. 19, I. R. 8, n. 18, I J. A. 47, I.R. 21); that actual construction of petrochemical facilities was *never* scheduled to begin immediately after takeover, and indeed not until July, 1963, at the earliest (I J. A. 51, I. R. 23, I J. A. 57, I.R. 25; III J. A. Co. Ex. 66, p. 7, item 16); that engineering studies were *not* completed by February 11, February 14, or February 20 (I J. A. 32, I. R. 14, see also I J. A. 223, Tr. 478; I J. A. 215-216, Tr. 467-468; I J.A. 229-230, Tr. 496-497) and that the temporary shutdown *was* completed by 2:00 P.M.

that day (I J.A. 28; I.R. 12).⁴ Only by ignoring these findings, as well as the numerous credibility resolutions made by the Trial Examiner, can intervenor argue that there is "no dispute on any essential fact" (Int. Br. p. 27) and "[c]redibility is not an issue in this case" (*Ibid.*, p. 36).

Board counsel and intervenor also ignore the Examiner's finding (I J.A. 57, I.R. 25), that the Company "set certain forces in motion which carry *prima facie* discriminatory implications and the evidence, even from certain of its own witnesses, refutes the defenses advanced in justification for its actions." His inference of discriminatory motivation is powerfully supported by his credibility finding that the Company's explanations were unconvincing. *Dyer v. MacDougall*, 201 F.2d 265, 269 (2d Cir.), quoted with approval in *NLRB v. Walton Mfg. Co.*, 369

⁴ Nor is there record support for intervenor's purported explanation of the non-unionization of its other plants (Br. p. 2), or for its assertions that: (1) the 35 importees were "accustomed to working with" Sutherland (Br. p. 6); (2) the jobs assigned them in Allied's other plants were "less exacting" (Br. p. 9); (3) "contracts for the operation of a gasoline refinery would not be appropriate for a petrochemical plant" (Br. p. 8); and (4) Quinn initialed only to show that the work had been performed and did not approve expenditures in advance (Br. p. 18).

Intervenor attacks the Trial Examiner (Br. p. 32) for discrediting Marshall's testimony that Texas Gas insisted on closing on December 31, 1962, for tax reasons, but the record shows that Marshall was actually discredited on a quite different point, namely, that it was uncertain until almost the morning of December 31, whether the deal would be consummated at all (I J.A. 21, I.R. 9, n. 19).

Intervenor also attacks (Br. p. 32) the finding that acquisition of Texas Gas was desirable "principally" to provide entry into the natural gas market in the Eastern Texas area, overlooking that this reason is the first stated and most elaborated in the Company's corporate minutes (I J.A. 14-16, I.R. 5-6, I J.A. 218-220, Tr. 471-474).

U.S. 404, 408; see also *NLRB v. Howell Chevrolet Co.*,
204 F.2d 79, 86 (9 Cir.), aff'd 346 U.S. 482.

Respectfully submitted,

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Attorneys for Petitioner

February 18, 1966



JOINT APPENDIX
Volume III

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 19,692

OIL, CHEMICAL AND ATOMIC WORKERS INTER-
NATIONAL UNION, LOCAL 4-243, AFL-CIO,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

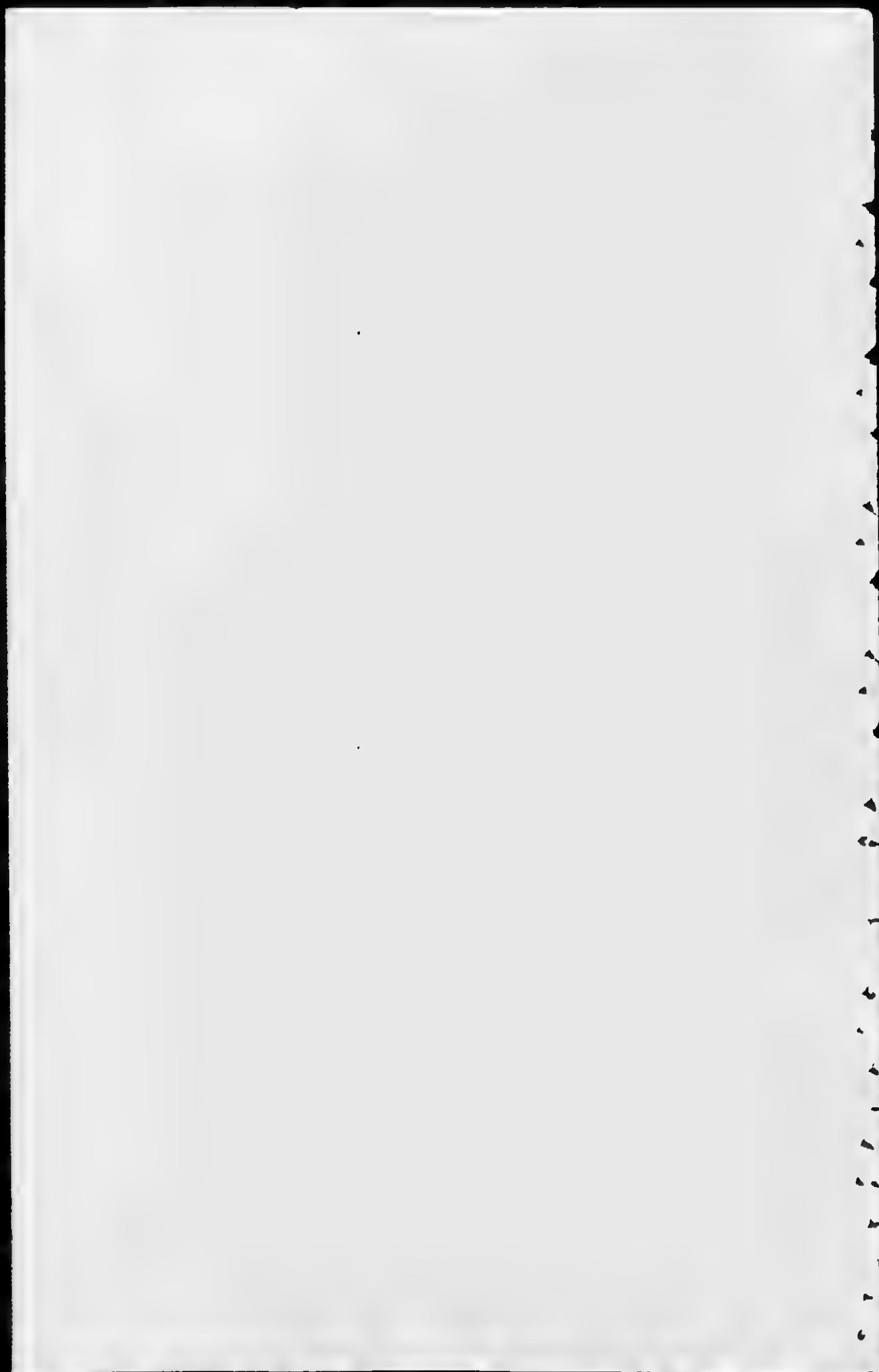
On Petition to Review and Set Aside an Order of the
National Labor Relations Board

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 14 1966

Nathan J. Paulson
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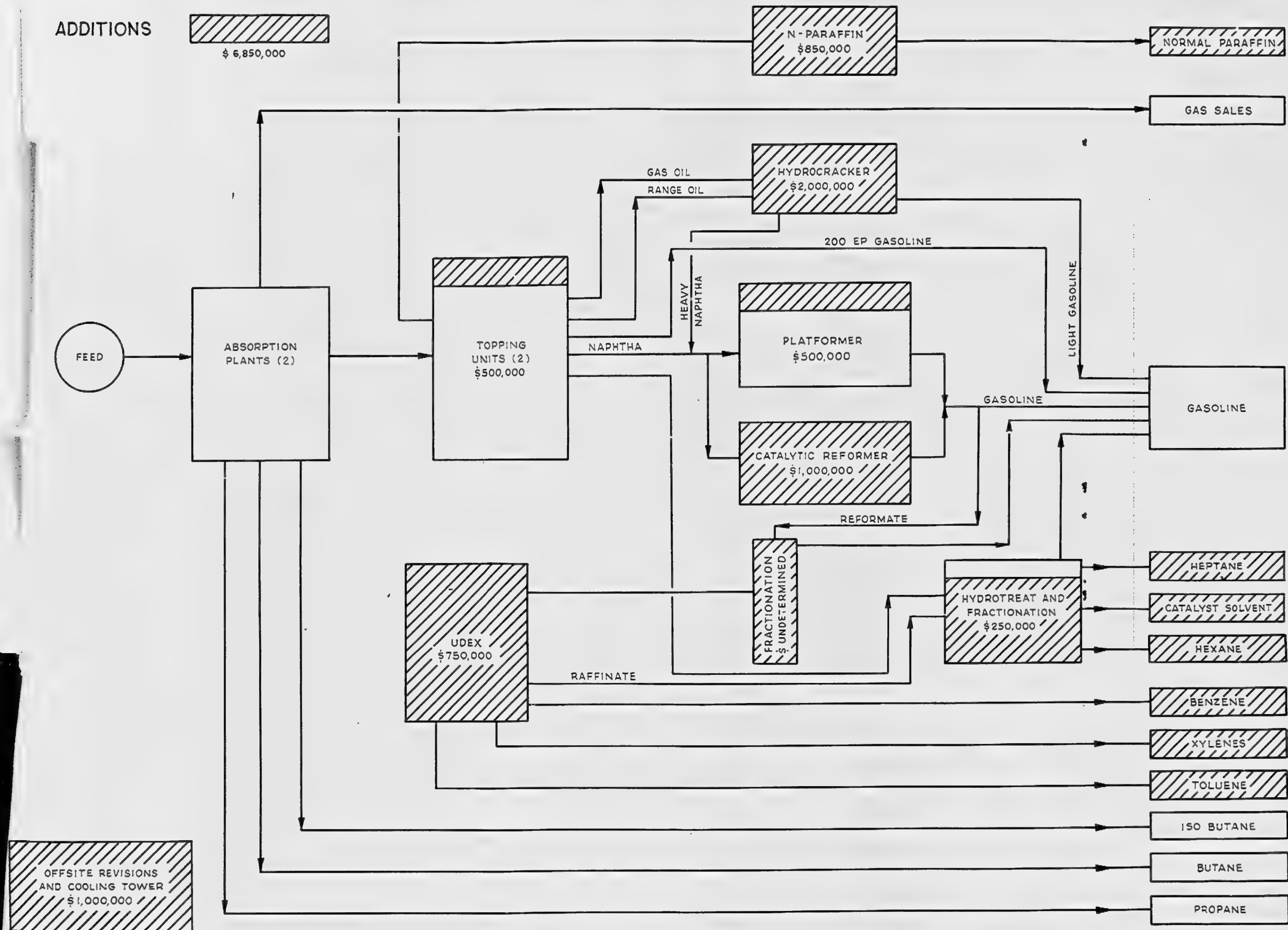
Volume III

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Co. ex. 5

FLOW DIAGRAM
WINNIE PLANT
FEBRUARY 1, 1964



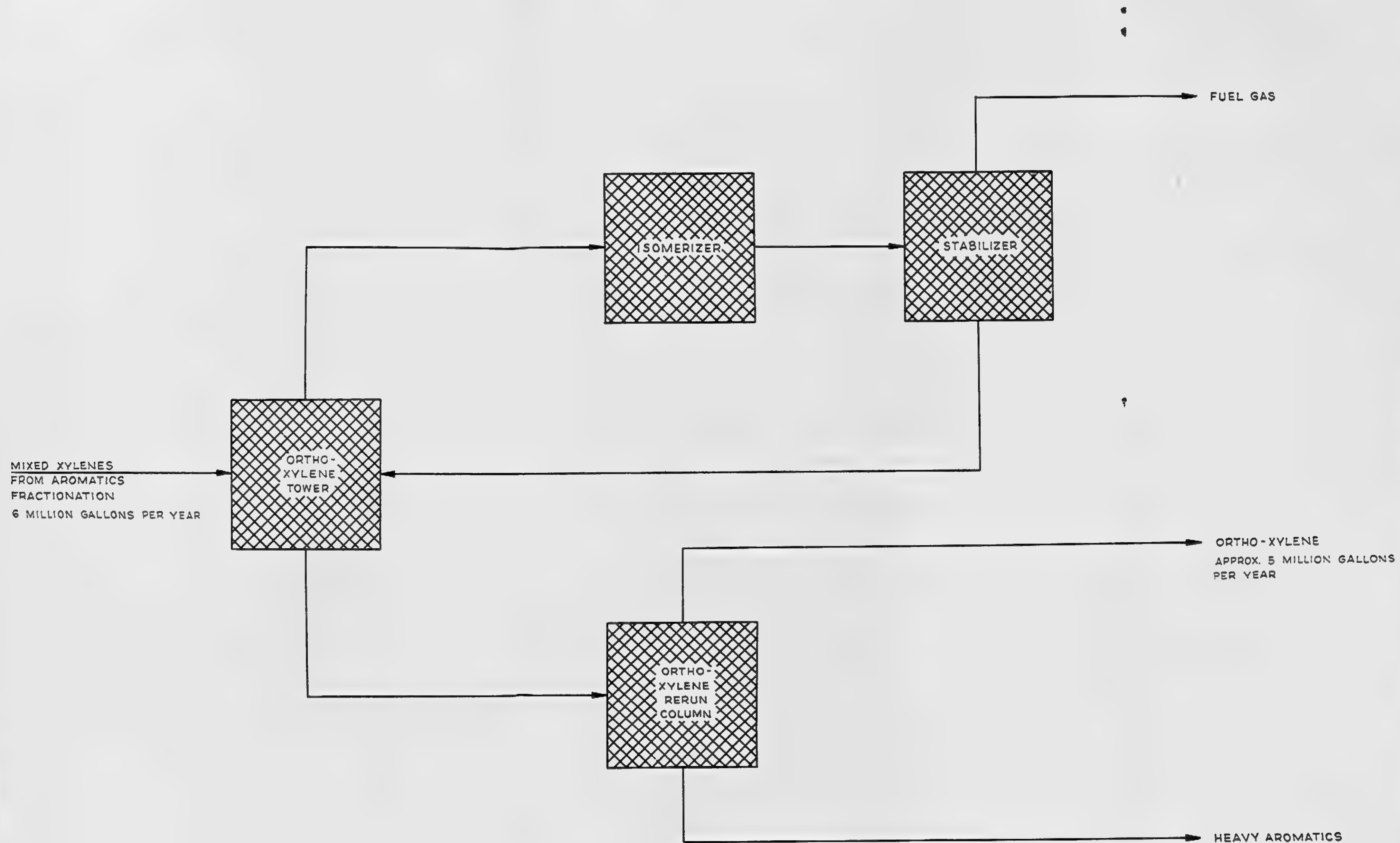
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PRODUCT SLATE
FEBRUARY 1, 1964

<u>PRODUCTS</u>	<u>PRESENT</u>	<u>PROPOSED</u>
<u>NATURAL GAS</u>	YES	+10%
<u>LPG PRODUCTS</u>		
PROPANE	YES	+27%
ISOBUTANE	YES	+67%
N-BUTANE	YES	+45%
<u>FUEL PRODUCTS</u>		
GASOLINE - 98 OCT. PREMIUM	YES	NO
- 90 OCT. REGULAR	YES	NO
-100 OCT. PREMIUM	NO	NEW
- 93 OCT. REGULAR	NO	NEW
RANGE OIL	YES	NO
GAS OIL	YES	NO
NO. 2 DIESEL OIL	YES	NO
<u>CHEMICAL SOLVENT SPECIALTIES</u>		
CATALYST SOLVENT	NO	NEW
HEXANE SOLVENT (LOW GRADE)	YES	SMALL
HEXANE (CHEMICAL GRADE)	NO	NEW
HEPTANE (CHEMICAL GRADE)	NO	NEW
<u>PETROCHEMICAL PRODUCTS</u>		
N-PARAFFINS	NO	NEW
BENZENE	NO	NEW
TOLUENE	NO	NEW
MIXED XYLENES	NO	NEW
BENZENE PRECURSORS	YES	NO

Co. ex. 7

ORTHO-XYLENE FROM MIXED XYLENES
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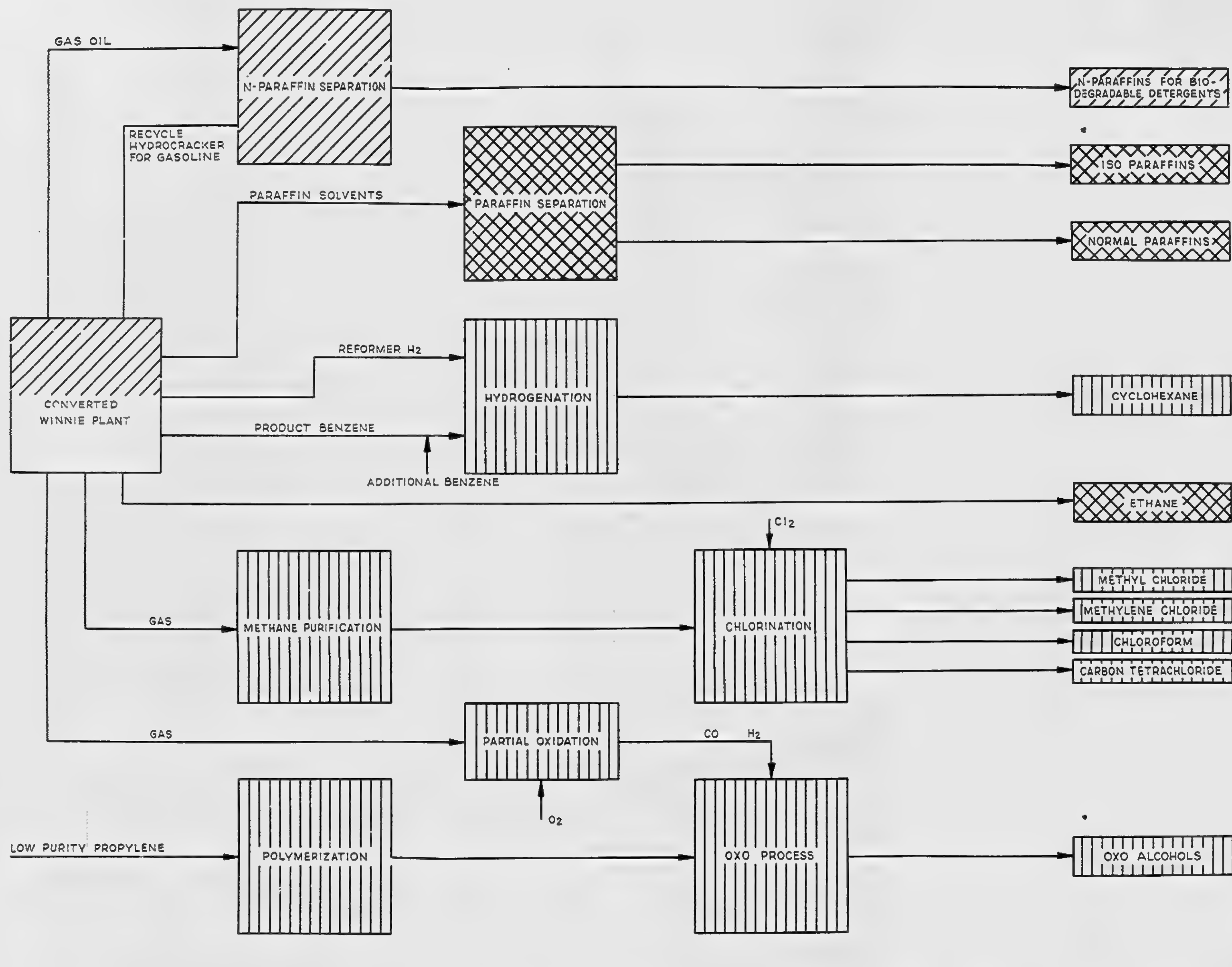


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OTHER PETROCHEMICAL PROJECTS



Co. ex. 20

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I herby acknowledge receipt
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5. Michael L. L.	# 16
6. B. L. L.	# 14
7. Monte M. L.	# 32
8. L. L. L.	33
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NATIONAL LABOR RELATIONS BOARD

Case No. 23CA1556

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In the matter of Union Texts
6-28-63 Elliott Reporter
 No. Page 2

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J. C. Cragg
R. D. F. F. F.
A. D. M. M. M. for J. A. Stinger
Q. D. M. M. M.
E. E. Halligan
M. M. M. M. M.
Julma Ballard
W. A. D. J. J. J.
B. W. Biddle
A. J. Miles
J. H. Lindsey
J. L. Bourque (J. L. Lindsey)
Erasta Melancon
Martin Melancon
M. B. M. M. M.
Elmo Melancon
Oll. L. L. L.
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L. M. M. M. M.
Harold W. M. M.

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Co. ex. 21

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 of final severance pay, vacation
 pay and one week pay in lieu
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11	O. P. Hampton
18	B. Shaw
22	Majors
13	K. Sawyer
21	J. D. Johnson
27	J. D. Johnson
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56	J. D. Johnson
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NATIONAL LABOR RELATIONS BOARD

Case No. 33091556

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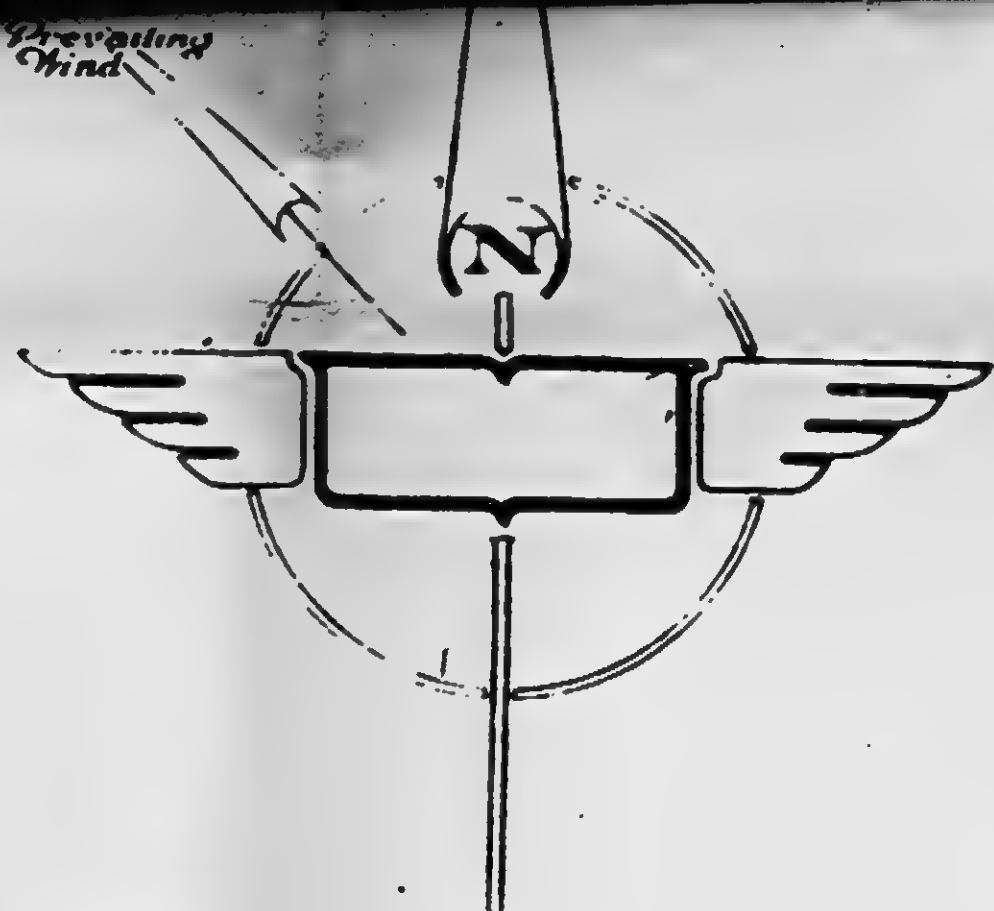
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SUMMARY
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COMPLETED OR NEARING COMPLETION
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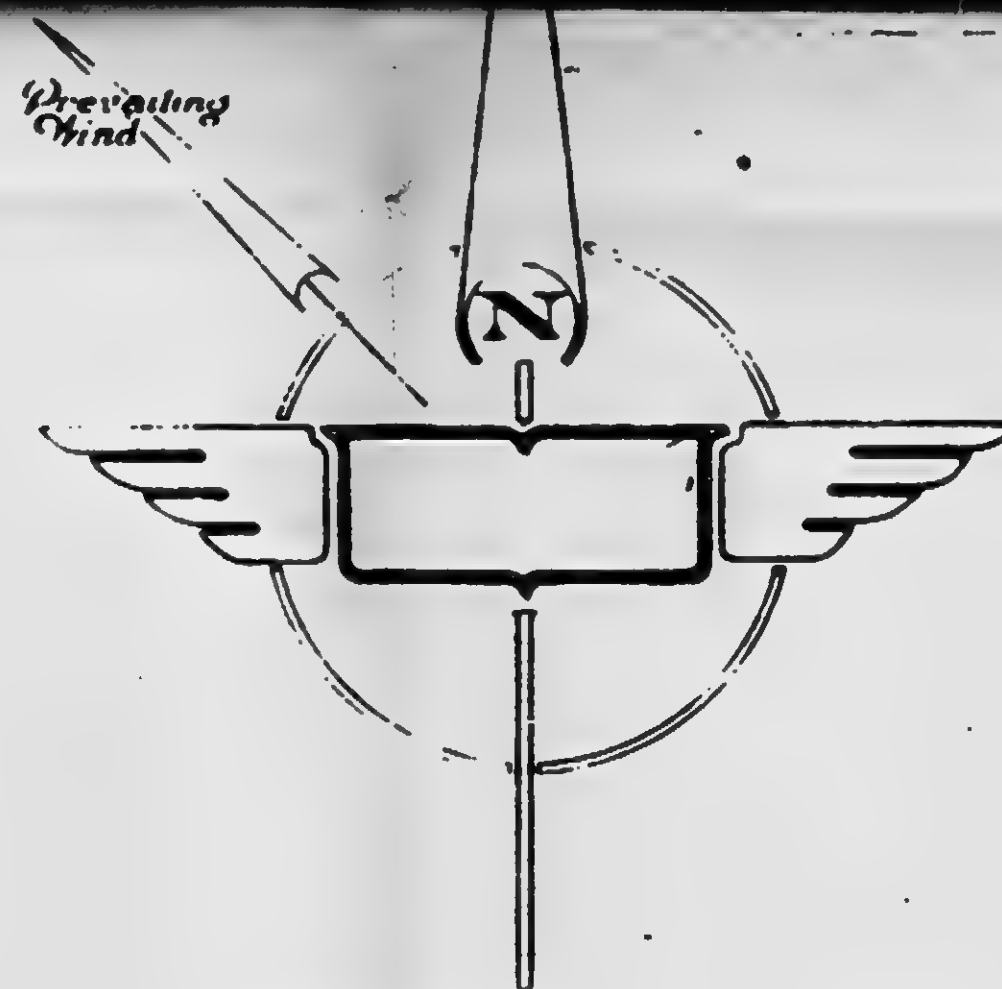
MA	REVISIONS	BY	DATE	APP	DRAWN	DATE

UNION TEXAS PETROLEUM HOUSTON TEXAS	
PLOT PLAN PROCESS UNITS	
WINNIE	TEXAS
SCALE 1" = 40'	

COUNTY ROAD

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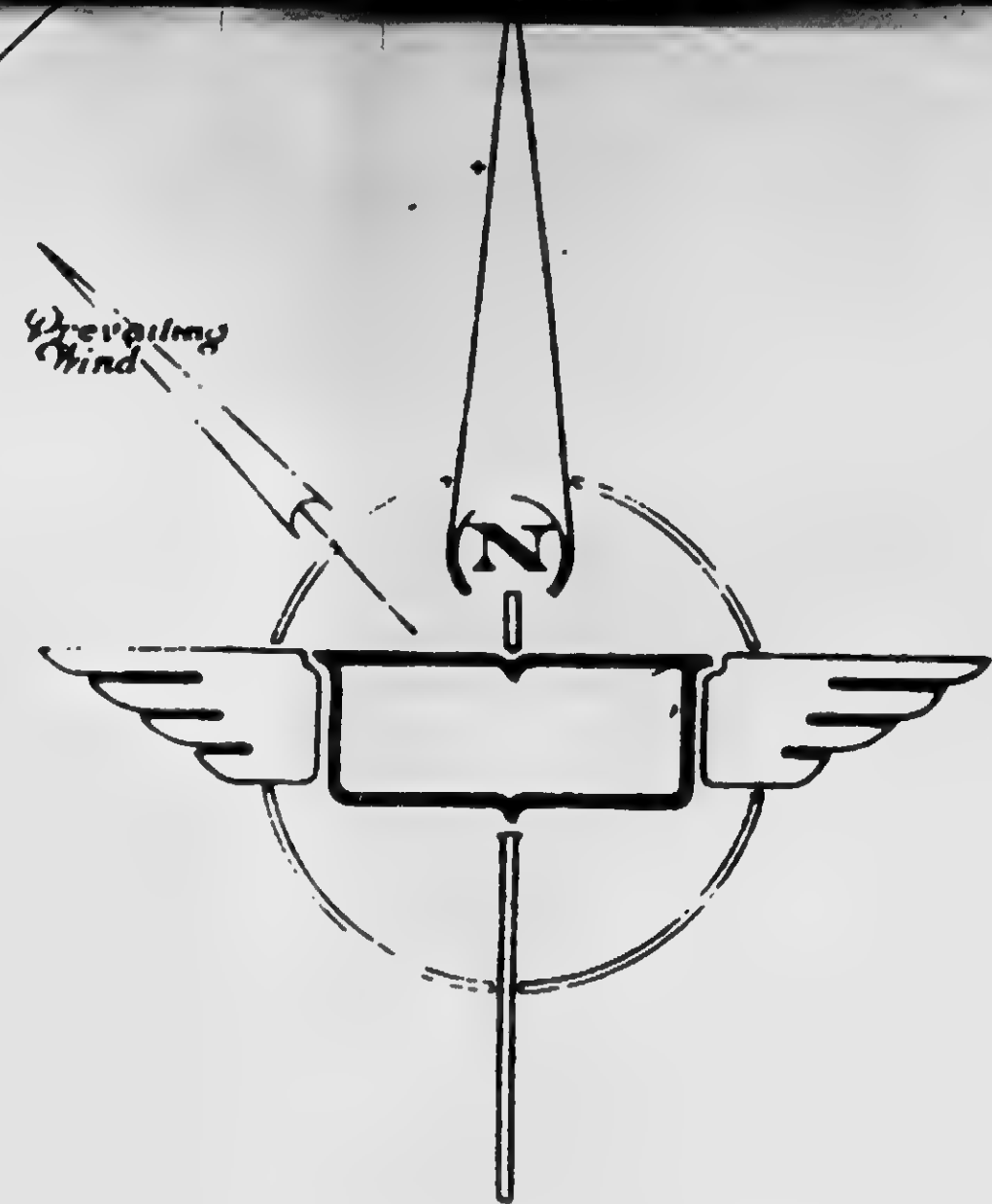
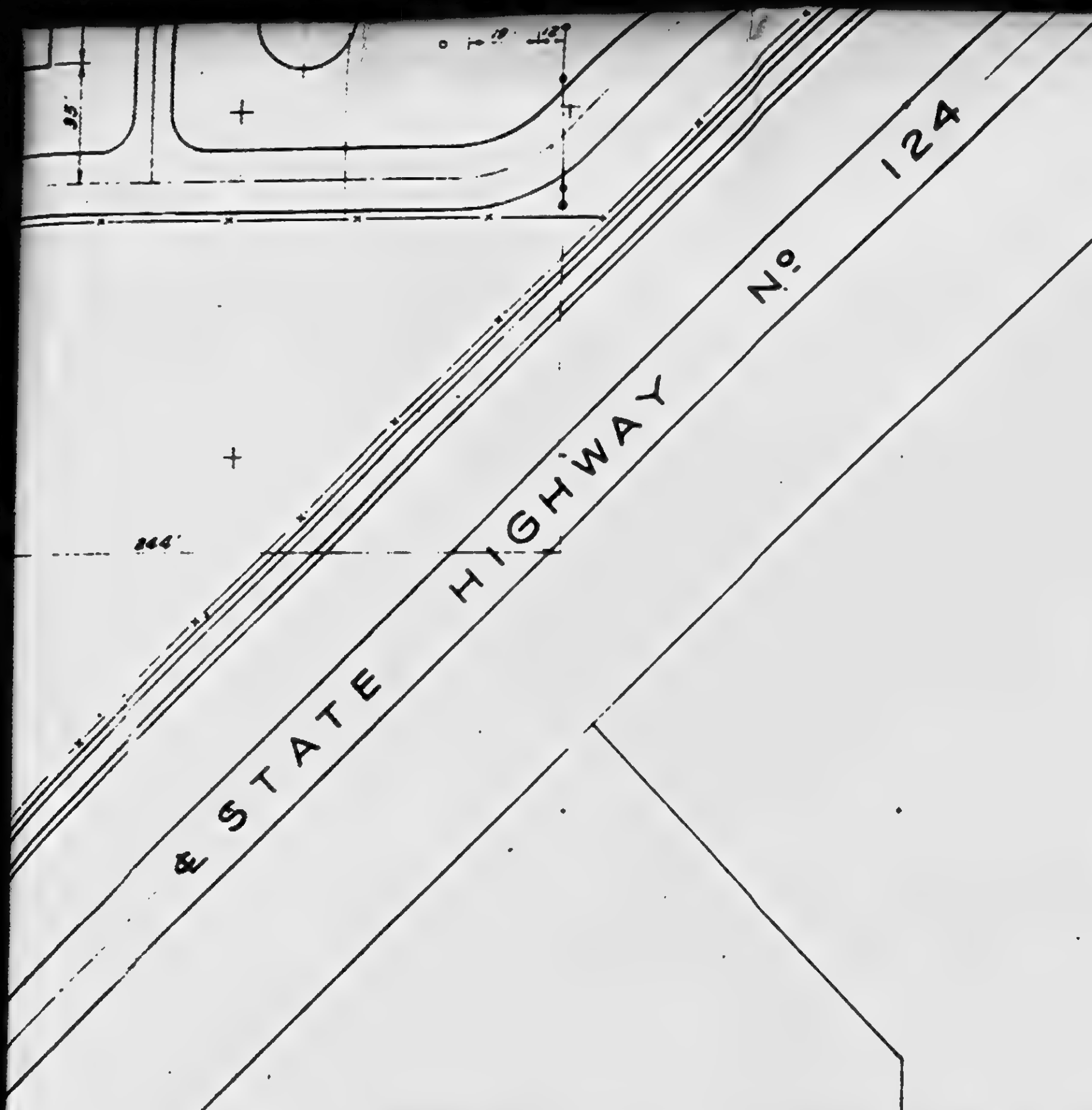


SUMMARY
 MAINTENANCE EXPENDITURE
 \$ 240,800

MA	REVISIONS	BY	DATE	APP	DRAWN	DATE	UNION TEXAS PETROLEUM HOUSTON TEXAS
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COUNTY ROAD

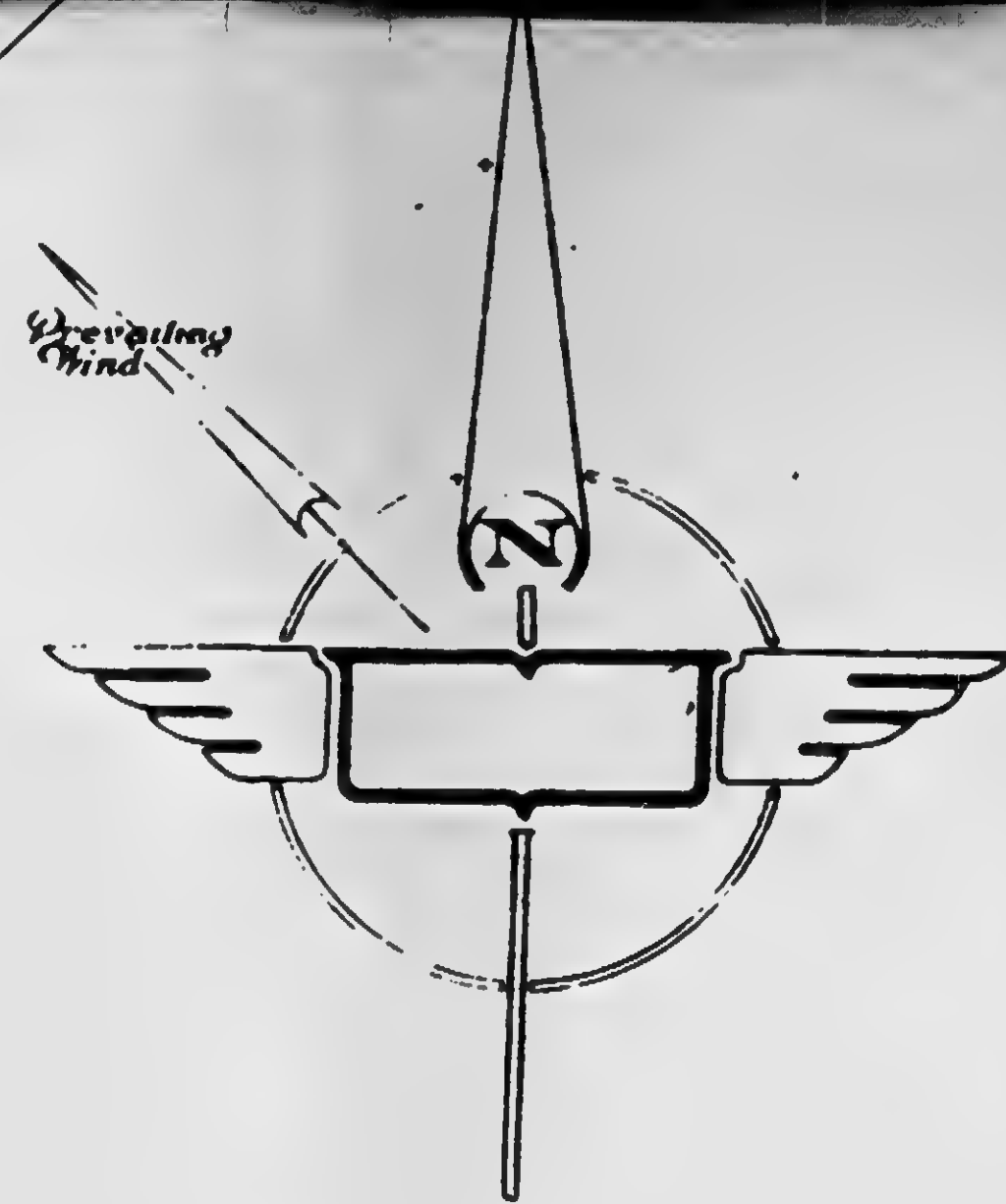
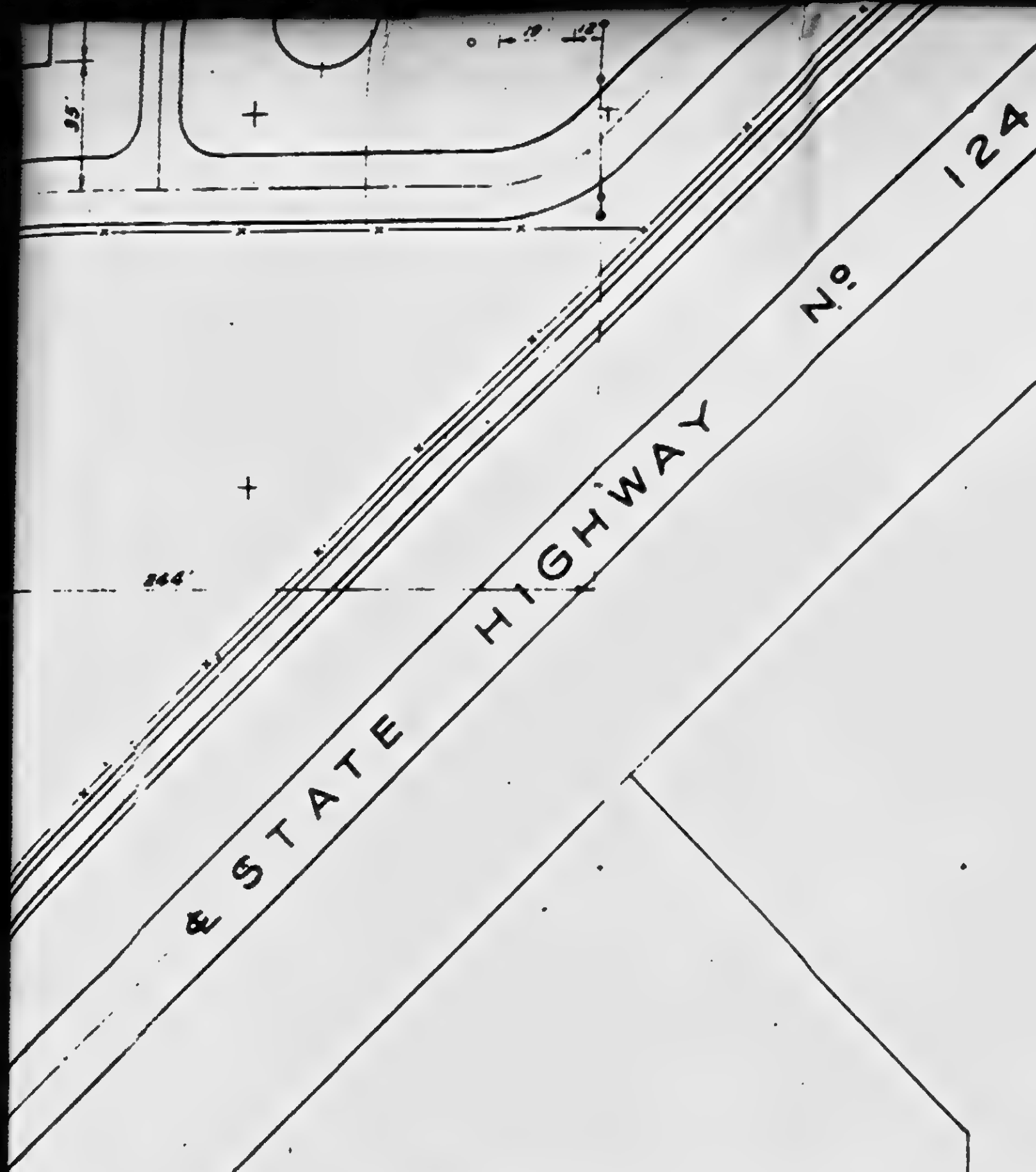
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OTHER PETROCHEMICAL PROJECTS
UNDER CONSIDERATION

MAINT	REVISIONS	BY	DATE	APP	DRAWN	DATE	UNION TEXAS PETROLEUM	
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							PLOT PLAN	
							PROCESS UNITS	
							WINNIE	TEXAS
							SCALE	
							1" = 40'	

COUNTY ROAD



OTHER PETROCHEMICAL PROJECTS
UNDER CONSIDERATION

MAINT	REVISIONS	BY	DATE	APP	DRAWN	DATE

UNION TEXAS PETROLEUM HOUSTON TEXAS	
PLOT PLAN PROCESS UNITS	
WINNIE	TEXAS
SCALE 1" = 40'	

COUNTY ROAD

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 19,692

OIL, CHEMICAL AND ATOMIC WORKERS INTER-
NATIONAL UNION, LOCAL 4-243, AFL-CIO,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

On Petition to Review and Set Aside an Order of the
National Labor Relations Board

BRIEF FOR PETITIONER

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 31 1965

Nathan J. Paulson
CLERK

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505 Scanlan Building
Houston, Texas 77002

MOZART G. RATNER
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Washington, D. C. 20006

Attorneys for Petitioner

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STATEMENT OF QUESTIONS PRESENTED

1. Whether the Board's failure to identify the findings of the Trial Examiner it considers "consistent" and those it considers "inconsistent" with its decision, and to explain its rationale for rejecting the latter, thwarts the reviewing function and requires remand for clarification.

2. Whether the Board erred in failing to affirm the Trial Examiner's findings that:

(a) The Company's maneuvers to avoid becoming the "employer" of unionized workers at the refinery were attributable to their union affiliation.

(b) In reality, the Company was a co-employer of the refinery workers between January 1 and February 14, 1963.

3. Whether the Board erred in dismissing the complaint.

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* Cases or authorities chiefly relied upon are marked by asterisks.



IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 19,692

OIL, CHEMICAL AND ATOMIC WORKERS INTER-
NATIONAL UNION, LOCAL 4-243, AFL-CIO,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

On Petition to Review and Set Aside an Order of the
National Labor Relations Board

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

This case is before the Court on a petition to review
and set aside a final order of the National Labor Rela-

tions Board (herein called the Board) dismissing in its entirety a complaint based on charges filed by the petitioner (herein called the Union). This Court has jurisdiction under Section 10(f) of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. §151, *et seq.*), the Union being a "person aggrieved" by the denial of relief. The Board's decision and order are reported in 153 NLRB No. 71.

STATEMENT OF THE CASE

Union Texas Petroleum, a Division of Allied Chemical Corporation (herein called the Company), owned and operated 14 small natural gas plants—all nonunion. (Tr. 71, 147, 192, 241-243, 649-652) On December 31, 1962,¹ it purchased a gasoline refinery and connected natural gas pipelines at Winnie, Texas, intending to produce petrochemicals and a higher octane gasoline. The seller, Texas Gas Corporation (herein called Texas Gas), had a current collective bargaining agreement with Oil, Chemical and Atomic Workers Union, Local 4-243, AFL-CIO (herein called the Union), which was the exclusive bargaining agent for most of the production and maintenance employees at the refinery. (Tr. 76, GC ex. 6 and 4, p. 14) The truck drivers and salaried employees at the refinery, and the pipeline employees, were unrepresented by any labor organization. (Tr. 100-101)

After title passed, the refinery was kept in operation for six weeks, from January 1 to February 14, under an "operating agreement" with Texas Gas. During this time, the Company hired the nonunion truck drivers at the refinery (Tr. 70, 173), all the unrepresented office, engineering, and supervisory refinery employees (Tr. 122-123, 126),

¹ All dates are in the period from October 1962 to July 1963.

and most, if not all, of the 50 nonunion hourly and salaried pipeline employees (GC ex. 3, Tr. 32-33, 173)—but none of the union-represented employees at the refinery and the Port Neches terminal. (Tr. 27-28, 128) The Company refused to recognize and bargain with the Union as representative of these employees on the ground that it was not their “employer.” (GC Ex. 9, 11)

On February 14 (a full month before a shutdown became necessary for repairs) (Tr. 377-378, 619, 630), the Company suddenly terminated the operating agreement (Tr. 121-122, 244-246, 567, 657), ordered the plant shut down on a temporary basis (Tr. 126-129) and all the union-represented employees discharged, expelled and prevented from communicating with the plant. (Tr. 128, 352) Asked whether the discharged employees would have a chance to resume employment, a high Company official, Sutherland, General Manager of Plant Operations, replied that there would be no employment office at the plant at that time and that the Company probably would “restaff” with Company personnel. (Tr. 354) The Company immediately imported from its nonunion plants untrained (Tr. 48, 130, 138, 355, 624) replacements for the locked out union crew. (Tr. 141, 644, 662, 664, 713-714)

Three days later, on a Sunday, the Company abruptly (Tr. 356-357) ordered most of the replacements to return to their home plants. (Tr. 139-140) Sutherland explained to Texas Gas General Superintendent Neville that “somebody jumped the gun and got them in too early. [The Company] might get into trouble by having the men there so early.” (Tr. 141). Sutherland neither denied making this remark nor explained the nature of the “trouble” the Company feared. Subsequently, Sutherland commented to Neville that “they had no unions at any of the [Company] plants.” (Tr. 147, 192).

On February 20, the Company signed a contract with Fluor, an outside maintenance contractor, to take over maintenance work which had previously been done by bargaining unit employees. (Co. Exh. 9). On February 22, the Company invited the terminated refinery workers to apply for employment applications (Co. Exh. 43), intending to subject them to mental or psychological tests which would "eliminate a whole lot of them." (Tr. 145, 191-192) By June, when the complement totalled 37, the Company had hired only 11 out of the 72 terminated bargaining-unit employees. (Tr. 696-697)

Upon charges filed by the Union, a complaint was issued alleging that the Company had violated Sections 8(a)(1), (3) and (5). After a full hearing, the Trial Examiner made detailed findings, including a number of crucial credibility findings based in part on demeanor. He concluded, *inter alia*, that the operating agreement and the lockout were designed to keep the union-represented employees off the Company's payroll, pending substitution of nonunion replacements, effectuating the Company's "calculated and fixed resolve to eliminate the preexisting unionized situation * * * thereby avoiding a bargaining obligation with the Union when it took over operation of the plant." (TXD 22, 24, 25, 27)²

The Board dismissed the complaint on findings unresponsive to the Trial Examiner's credibility resolutions and the inferences he based upon them. Although the Company had offered no legitimate business explanation for the substitution of untrained importees for experienced refinery workers, the Board found that there was "no evidence" that the shutdown and layoff were "motivated by union animus." (D&O 2, 3). The Board asserted that the Company had acted with its "legitimate business interests * * *

² "TXD" refers to the Trial Examiner's Decision, and "D&O" refers to the Board's Decision and Order.

in mind" (D&O 3), but it did not identify any such interest. The decision does not disclose which, if any, of the detailed findings upon which the Examiner based the inference of discriminatory motivation the Board rejected—or whether the Board considered lack of direct evidence of union animus a bar to finding antiunion motivation.

A. Original Shutdown Plans Found Discriminatory

It is uncontested that the Company planned to convert the refinery into a plant which would produce at least 65 per cent petrochemicals (Tr. 513-514) and a higher octane gasoline. (Tr. 500, 502-503)³ However, this was a protracted, step-by-step project, requiring the expenditure of about seven million dollars. (Tr. 255, 502). No such heavy construction was even *scheduled* when title passed or by February 14, the time of the temporary shutdown. (Tr. 468-469, Co. ex. 66, pp. 6-8). In fact, at the time of the June hearing, weeks after the Company began bringing the plant back "on stream" (Tr. 611), the heavy construction still had not begun (Tr. 468-470, 502), and the products being produced in the refinery were basically the same as before the shutdown. (Tr. 48, 429, 461-462)⁴ No "petrochemicals" were being produced. (Tr. 517-518,

³ The October corporate minutes of Allied Chemical Corporation (in whose name the refinery was purchased) proposed "to produce aromatic chemicals and to upgrade gasoline" at the plant. (Tr. 471-473).

⁴ During the four-month shutdown, a maintenance contractor had renovated the plant, repairing and modifying defective equipment, installing automated controls, and preparing the plant for heavy construction. (Tr. 270, 373, Co. ex. 24-B and 25-B) The maintenance work included such items as replacing (Tr. 606) boiler combustion controls and retraying towers (listed as items of "capital expenditures" totaling \$333,300 on Co. ex. 25-B). Other work was listed as "maintenance expenditures" totaling \$240,800 on Co. ex. 24-B, which showed the minor sum of \$25,300 representing preliminary expenses for petrochemical conversion.

522, 525)⁵ The petrochemical facilities were scheduled to be constructed, by different contractors (Tr. 468-469, Co. ex. 9, par. 3.1; Co. ex. 11, art. I, III), without a further shutdown. (Tr. 468-469, 610)⁶ These new units were designed to further process petroleum or petroleum products, to convert them into "petrochemicals" for utilization by the parent company and for sale. (Tr. 260, 275, 458-459, 491-492, 500-501)⁷

It is also uncontested that the Company planned, when the December 5 "Purchase Agreement" was signed, to receive the gasoline refinery in a shutdown state and to replace the refinery employees. In a memorandum dated December 4 (Co. ex. 66, p. 6), the Company's engineering staff had indicated the original plans for a shutdown by Texas Gas on December 28; a plant "takeover" by the Company on January 1; "Instrument revisions by contractor" and "Familiarization of Union Texas with plant and its operations" from January 1 to February 1; and "Tentative plant start-up" on February 1. The Company's witnesses confirmed the original plans to have all Texas Gas employees out of the refinery four days before the

⁵ The only new customers which the Company was supplying with a petrochemical product were those who were being sold normal hexane, which was being sent from the plant elsewhere for further processing. At the time of the hearing, the petrochemical facilities needed for purifying the hexane had not been built, and the same low-grade hexane was being manufactured as before the shutdown. (Tr. 461-462, 515-516)

⁶ President Marshall testified that "Basically what has been done is that various units have been altered and tie-ins and set-ups been done to the units to prepare them for the addition of" the new equipment. (Tr. 270)

⁷ President Marshall explained that "petrochemicals are things that are either extracted from hydrocarbon streams going through the plant which are not taken out in the conventional refinery, or if taken out, in a petrochemical plant are taken out in a much greater state of purity." (Tr. 257)

⁸ The memorandum projected the earliest date for beginning construction work as July. (Co. ex. 66, p. 7) The Company's technical director testified that "everything is on schedule." (Tr. 468)

takeover, and to replace the (union) operating employees with (nonunion) employees. (Tr. 662-663, 756, 758) The plans did not call for replacement of the nonunion truck drivers and salaried employees at the refinery, or the nonunion pipeline employees. (Tr. 663)

At the hearing, the Company did not give any explanation for preferring to operate the refinery with employees from its small natural gas plants rather than with experienced Texas Gas refinery employees—other than its purported practice of staffing each “new” plant with its own “surplus” employees. (Tr. 710-711)⁹ The average tenure of the union-represented Texas Gas employees was in excess of 10 years. (GC ex. 2) The nonunion Company employees would have required training to learn the different skills needed for operating the plant. (Tr. 48, 130, 138, 189, 354-355, 624) They had not been selected for transfer to the refinery by any testing program; 40 per cent of them subsequently failed to pass the “employment” tests given them and former Texas Gas refinery employees during the shutdown. (Co. ex. 61)

Trial Examiner's Findings

The Trial Examiner found that the Company had “an unlawful and discriminatory design . . . , in succeeding to the Winnie plant, of deliberately terminating and refusing to employ the hourly employees represented by the Union, so as not to be encumbered by an obligation to deal with the Union.” (TXD 21) In support of this finding, the Trial Examiner specifically relied, *inter alia*, upon

⁹ The Company did not assign any of its alleged “surplus” to replace Texas Gas’ nonunion employees—neither the truck drivers it hired on January 1 (Tr. 70, 173) nor the pipeline employees it hired on February 11. (Tr. 173) The Company claimed that it had “plans afoot” to staff a new plant to be constructed at Geismar, Louisiana, but did not explain why it decided to use untrained employees (even if a “surplus”) to replace an available, experienced, union crew in an operating plant. (Tr. 712)

(1) the long experience of the union employees, (2) the nonunion situation at the Company's other 14 operating plants, (3) the absence of experience on the part of employees in its other plants, "none of which is a refinery (or a petrochemical plant)," (4) the Company's peculiar actions after the shutdown plans were postponed, and (5) the absence of a reasonable, nondiscriminatory explanation for the replacement of union with nonunion employees. (TXD 21-22)

The Trial Examiner specifically discredited the testimony of Sutherland, the Company's General Manager of Plant Operation, that the purported 35 (actually 40-50) employees imported to replace the unionized workers were actually "surplus." He found "it would surpass credulity to accept Sutherland's explanation that these were regular operating employees who constituted a surplus taken from each of [the Company's] 14 other plants (in which there was a total of 235 employees in all hourly classifications) . . . Any concept of sound business practice would dictate strongly against the maintenance, for a relatively long and indefinite period, of such a large number of surplus employees for the purpose indicated by Sutherland [of staffing new plants], especially as they had to be trained at Winnie to perform the necessary work." (TXD 23, Tr. 662-663, 698, 710-711)

The Trial Examiner also found that the Company's "great stress upon its program for petrochemical conversion of the Winnie plant" fails to justify the Company's plans to replace the union employees. "No such transformation of the plant—or more especially of the work functions of the affected employees—took place or is in the making At no point, up to the time of the hearing [in late June] and as projected thereafter, were any of the Texas Gas employees rendered unqualified for

their same jobs by reason of the asserted program for petrochemical conversion." (TXD 22)¹⁰

Board's Decision

The Board recited the undisputed fact that the Company at all times intended to take over the Winnie plant in a shut-down condition (D&O 2), but it did not even mention the Trial Examiner's finding that *the reason behind this intention* was discriminatory. The Board also recited the undisputed fact that the Company "planned to convert all the existing production areas from a gasoline refinery to a plant producing petro-chemicals," but it did not indicate the relevance of that fact to the Company's motive for replacing unionized refinery workers with less experienced nonunion employees. Moreover, the Board ignored the credited evidence and the Trial Examiner's finding that at the time of the hearing, the plant was still a gasoline refinery,¹¹ and that the petrochemical facilities were to be constructed without another shutdown. The Board found that seven million dollars had been budgeted for conversion—but it did not mention the undisputed evidence that one and one-half million dollars of that amount was to be spent to improve the gasoline facilities which were to be kept in operation. (Tr. 502-503)

The Board did not specifically reject, nor even mention, the Trial Examiner's discrediting of Sutherland's claim that the replacement employees constituted a "surplus" at the Company's other plants.

¹⁰ The more automated plant was continuing to strip the natural gas as it flowed through the plant, and the gasoline production facilities were resuming operation. One operator, who returned to work, testified the automated controls had little effect on the duties he had performed before. (Tr. 413-419, 425-426)

¹¹ The Company remained in the gasoline business, continuing to supply over 100 filling stations with gasoline. (Tr. 176, 517) The Texas Gas trademark was changed to "Texgas." (Tr. 69)

*B. Operating Agreement Found A Maneuver To
Avoid Employing Union Employees.*

It is uncontested that, for tax reasons, Texas Gas insisted upon concluding the sale by December 31. (Tr. 251) At the time of the signing of the December 5 purchase agreement, such a sale date would accommodate the Company's engineering plans¹² for a shutdown, during the month of January, for instrument revisions, replacement of reformer catalyst, and possible relocation of some equipment, by a maintenance contractor. (Co. ex. 66, pp. 6-8; Tr. 287-288) But after the purchase agreement was signed, the Company decided to postpone the shutdown and to have the refinery kept in operation temporarily under an "operating agreement" with Texas Gas. (Tr. 251-252)

The Company's explanation for postponing the shutdown was given by Technical Director of Petrochemicals Ekholm. He testified that the Company had misconstrued the extent to which engineering was available for immediate use in the field and that "we simply were not ready to undertake heavy field construction at that time . . ." (Tr. 476-477, cf. Tr. 252-253, 663, 758-759) The Trial Examiner discredited this explanation, pointing out that the December 4 engineering memorandum projected the earliest date for beginning construction work as July 12, and that no heavy field construction had been begun at the time of the hearing in June—weeks after the Company started bringing the refinery back "on stream." (TXD 7, ftn. 18; 16) The Trial Examiner found instead that the Company gave "effect to other considerations, such as preparedness for staffing the Winnie plant and negotiations with Fluor for subcontracting the maintenance." (TXD 7, ftn. 18, Tr. 290)¹³ Ignoring both the

¹² These plans were drafted in October and November. (Tr. 288)

¹³ The Company did not sign the contract until February 20 for Fluor Maintenance, Inc. to perform all maintenance work at the

admittedly limited purpose of the originally scheduled January shutdown (Co. ex. 66, pp. 6-8) and the Trial Examiner's discrediting of the Company's explanation for the postponement, the Board declared in a footnote that the Company "had not desired to take over the plant until sometime thereafter, inasmuch as its *conversion* plans would not be completed by December 31." (D&O 2, fn. 4, emphasis added)

The Company offered *no* explanation for choosing to pay Texas Gas a \$7,500 monthly profit (Tr. 247) to keep the refinery in operation until a shutdown was necessary, rather than place the refinery operating personnel on its own payroll, saving the \$7,500 monthly. President Marshall explained only that the Company concluded to purchase "on the condition that [Texas Gas] would go forward and operate the plant in precisely the same way as they had done . . . , " and that "all we were trying to do was to keep the plant rocking along to minimize the losses" (Tr. 252, 276) A Company witness, Texas Gas General Counsel Elliott (who had negotiated the operation agreement on behalf of Texas Gas), informed a representative of the Union in January that the Company had entered into the operating agreement because the Company was not ready to *operate* the plant when the title passed. (Tr. 585-586, 589-592) The Trial Examiner found, in support of his concluding finding that the Company had a "discriminatory design," that the Company failed "to show any plausible or credible reason . . . for entering into the operating . . . agreement . . . and not directly undertaking operation of the plant itself with the existing personnel." (TXD 21) He also found that the Company's motive for entering into the agreement was "to avoid taking over,

refinery. (Co. ex. 9) President Marshall, in giving an explanation for the shutdown in February, testified that by that time, the Company had contracted "with Fluor to take on this job. Prior to that time . . . prior, on December 31, we were not ready." (Tr. 253)

the operation itself at an inappropriate time when, among other things, it was not ready with its own restaffing plans." (TXD 23, 24) The Board, ignoring the entire issue of discriminatory motive, merely recited the undisputed fact that the Company had engaged Texas Gas to operate the plant "on a cost plus a fixed fee basis" (D&O 2), as if that ended the matter.

C. Operating Agreement Found A Sham

The operating agreement, wherein Texas Gas agreed to continue operating and maintaining the refinery and pipelines until April 1, unless earlier terminated on 15-day notice, described Texas Gas as an "independent contractor." (GC ex. 5) However on January 1, the day the agreement went into effect, the Company hired the only Texas Gas official, Woolfolk, who had responsibility over the plant's day-to-day operations. (Tr. 68, 99, 114-115, 166-168) He had been the official in Texas Gas' Houston headquarters who had approved purchase requisitions from the refinery supervision (Tr. 394-395), and who had held regular weekly staff meetings at the plant and had made regular plant inspections. (Tr. 166-167, 344-345, 349) After January 1, all directions of the refinery operations from Texas Gas' Houston office ceased. (Tr. 115, 171-173, 195-196) On that date, Gladden (who was the top Texas Gas official in Houston, but who was not familiar with the functioning of the Winnie refinery, Tr. 168), telephoned General Superintendent Neville at the refinery and (in Neville's words): "told me to check with Mr. Quinn on everything because he was representative of [the Company], and to check with him on everything to be done, and on products, if we wanted any change, why, do whatever he said about it." (Tr. 98, 102-103, 172)¹⁴

¹⁴ After January 1, Gladden and the two other remaining officials in Texas Gas' Houston office, and their secretaries, were engaged in dissolving the corporation. (Tr. 168) Texas Gas had filed on December 27 a formal notice of intent to dissolve with the Texas Secre-

The Company had designated Quinn, its Area Superintendent of Eastern Division (Tr. 638-639) to be its "official representative" under the operating agreement. (Co. ex. 17, p. 2) He immediately set up office at the refinery, "gave a good many orders to most of the people," and "more or less" took over as the man in charge. (Tr. 104-105) He "gave orders around in the office"—not only to Neville, but also to Kruger (the Operations Superintendent), to Cating (the Personnel Director), and to Ellis (the Maintenance-Construction Supervisor). (Tr. 105, 115, 344, 347-348)¹⁵ Although the operating agreement required Company approval of equipment expenditures only in excess of \$500 (GC ex. 5, art. 3.6), Quinn required that *all* expenditures by Texas Gas have either his approval, or in his absence, the approval of Gotcher, who later became the Company's plant manager at the refinery. (Tr. 51, 115-156, 176, 343-344, 349, 395, 655) The operating agreement provided that Texas Gas would operate, maintain, repair, and renovate the facilities as called for "*by prior instructions*" and "in a condition satisfactory to Company." (GC ex. 5, art. 3.1, emphasis added) The Company did not adduce evidence of what the "prior instructions" were.

Another Company supervisor was also giving instructions to plant personnel. Texas Gas Traffic Manager Herrington had been hired by the Company on January 1. (Tr. 66, 298, 516) He not only gave instructions by memoranda to the operations shift foremen (Tr. 110, 113,

tary of State, stating: "The corporation shall cease to carry on the business for which it was organized (except insofar as may be necessary for the winding up thereof) as soon as practicable under the circumstances. . . ." (GC ex. 13, par. 4(1)).

¹⁵ Although discounting Quinn's authority over the plant personnel, Sutherland admitted that Quinn was there "to observe the operation, report to me any irregularities or any problems arising," and "to observe the operation and report to me, as he did in the other plants." (Tr. 653-655)

297), but continued to perform his supervisory duties at the plant. (Tr. 66-67, 109-110, 297-298) In his supervisory capacity, he directed the work of 14 members of the bargaining unit represented by the Union, including 10 rackmen at the refinery and 4 pumpers at the terminal. (Tr. 110, 304-306, 332-334) He instructed them what to do, and personally inspected the work at the refinery's loading rack and directed how the work was to be performed. (Tr. 304-306, 315-316)¹⁶

Other Company officials, according to credited testimony, exercised complete control over the plant-level personnel on February 14, beginning eight hours before the Company's termination of the operating agreement was made effective. Company official Sutherland, at an 8 a.m. meeting, suddenly announced to the salaried (nonunion) personnel that the plant was to be shut down and that all of them would be placed on the Company's payroll at 4 p.m. (Tr. 122-123, 352) Then Sutherland and Woolfolk gave orders that the plant would be shut down as they directed (Tr. 124-126, 352-354), that *the operating employees were to leave the plant as they completed the directed shutdown* (Tr. 124, 352), that *the maintenance employees were to be sent home immediately* (Tr. 124, 352), that the employees must turn in any company equipment in their possession (Tr. 352), that *no telephone calls were to be permitted in or out of the plant except on Quinn's approval* (Tr. 135, 704), that *special guards (employed by the Company) were not to allow anyone to*

¹⁶ Rackman Keeler testified that Herrington directed what tank cars to load with which products, and what gasoline products to load into trucks. "He would tell us flush it out with hexane solvent and then we would have to pull the belly cap off the bottom of the car in order to get solvent out on the ground after we flushed it out, and then he would check it. . . ." (Tr. 297-298, 304-306) Director of Sales of Petrochemical Section Wilkinson testified that Herrington gave instructions to "whomever it might be necessary in order to effect the transportation of the movement of product out of the plant." (Tr. 518)

*enter the plant (Tr. 704), and that the terminated (union-represented) employees were not to be allowed to reenter the plant that day to obtain their personal property. (Tr. 135, 704)*¹⁷ Asked whether the operating employees would have a chance to resume employment, Sutherland stated that there would be *no employment office at the plant at that time* and that the Company "probably would restaff the plant with [Company] personnel." (Tr. 354, TXD 12)

During the six-week period before the shutdown, the Company was compensating Texas Gas for the time spent by General Counsel Elliott in negotiating with the Union (in the name of Texas Gas) concerning pending grievances and a wage reopener. (Tr. 169-170, 557-559, 566)¹⁸ The Company itself had refused to bargain with the Union. In its written reply on January 11 (GC ex. 9) to the Union's January 1 bargaining request (GC ex. 8), the Company denied having any employees at the Winnie plant at that time, asserted that it planned "to take maximum advantage of the utilization of our present [nonunion] employees in the final staffing of this facility," refused to meet with the Union, and added that "it is our understanding" that the Union had reopened its collective bargaining agreement with Texas Gas and was bargaining for "certain changes"—referring to the Union's request for the pattern five per cent area wage increase. (Tr. 558, 566) The letter

¹⁷ The Trial Examiner specifically discredited Sutherland's testimony (Tr. 703) that he and Woolfolk were not giving orders, but were acting in an "advisory" capacity: "I am convinced that Sutherland was shaping his testimony in accordance with his judgment of the legal issues at stake in a deliberate effort to relieve [the Company] of responsibility for its actions taken before 4 p.m. on February 14." (TXD 12) Woolfolk did not testify.

¹⁸ On December 31, the Company wrote Texas Gas a letter which, *inter alia*, provided that compensation for time spent by "Secretary" (and General Counsel) Elliott in connection with the operations would be included in operating expenses for which Texas Gas would be reimbursed. (Co. ex. 17, Tr. 543)

did not reveal that the Company had written Texas Gas on December 31 that "Salaries and wage rates are not to exceed those paid by Texas Gas Corporation on December 15, 1962."¹⁹ The negotiations continued between Elliott and the Union, but no agreement on a wage increase was reached. (Tr. 566-567) After the shutdown, Elliott agreed in further negotiations with the Union to give the discharged employees one week's wages in lieu of notice, in addition to the contractual severance pay under the bargaining agreement. (Tr. 569-571; GC ex. 6, art. XXIX) The operating agreement had provided that "due and proper notice" of termination be given to the employees, and that "all direct labor costs" would be paid by the Company—plus the monthly fee of \$7,500 (characterized by the Company's President as Texas Gas' "profit", Tr. 247). (GC ex. 5, par. 4, 13.1)

Trial Examiner's Findings

On the basis of the "total situation," piercing the contrived declarations of the operating agreement,²⁰ the Trial Examiner found that Texas Gas was not an independent contractor, that the Company "possessed and exercised in a substantial degree control over the manner and means of the day to day performance under the operating agreement," and that "the operating agreement was a sham." (TXD 23, 25) Concerning the Company's *right* of control under the terms of the agreement, the Trial Examiner found (1) that the "operating agreement broadly qualifies the discretion of Texas Gas to operate and maintain" the

¹⁹ The Company's December 31 letter to Texas Gas also stated: "Hourly-paid employees will not exceed in number in each job classification those now employed by you." (Co. ex. 17)

²⁰ The agreement referred to Texas Gas as an "independent contractor," which would be "free of control or supervision of Company as to means and methods of performing" the work, and which would be the sole employer of the employees. It also provided that the "Company has contracted herein solely for the results of such work." (Co. ex. 5, art. 6)

refinery by the provisions, "as requested by Company by prior instructions" and "in a condition satisfactory to Company," which he found were left deliberately vague; (2) "The operating agreement in practical effect was terminable at will—as indeed it was terminated at [the Company's] will, without giving effect to the provision for 15 days' notice;" (3) the limitations placed by the Company on the number, classifications, and wages of the hourly employees "would tie the hands of Texas Gas in collective bargaining" with the Union; and (4) the Company "furnished all equipment, materials, tools, and premises", whereas "Texas Gas put up no risk capital and had no latitude whatsoever to make decisions which would govern its own profit or loss." Concerning the *practice* under the operating agreement, the Trial Examiner found: (1) The vague contractual provisions were "given meaning only by the actual practice of the parties from the outset in having Quinn installed on the premises, as [the Company's] official representative, making decisions on virtually all matters of consequence, which decisions the plant supervision was required to follow by blanket order of Texas Gas top management." (2) "All money expenditures, other than payroll, were directly in [the Company's] control" (emphasis added), and "such control of the purse strings was vital." (3) "The overall operations conducted by Texas Gas prior to the operating agreement could not realistically be severed by [the Company] managing the administrative, sales, marketing, shipping, and (on February 11) the pipeline activities, without [the Company] exerting control over the plant operations purportedly delegated to Texas Gas." (4) "Admittedly, [the Company] directly supervised during this period the work of the rackmen and truckdrivers at the plant and the pumpers at Port Neches. These functions were clearly embraced by the operating agreement. Moreover, the 10 rackmen and 4 pumpers were included in the bargaining

unit, so that [the Company] was directly acting as employer of Union-represented employees." (5) No supervision or management was furnished by Texas Gas above the plant level, and plant operations were "wholly conducted by General Superintendent Neville subject to instructions from [the Company's] official representative, Quinn." (6) Texas Gas was in the process of corporate liquidation. (7) The Company was aware, as the new owner, that any indicated desires on its part during the brief term of the operating agreement would naturally have a controlling impact on Texas Gas personnel. (8) "The fact and extent of [the Company's] control is graphically demonstrated by its actions on February 14—while the operating agreement was in effect. Without notice, it took command of the plant, summoned a general meeting, hired the Texas Gas supervisors, engineers, and administrative staff, shut down the plant, terminated the hourly-paid help represented by unions, and issued a variety of other significant orders." (TXD 24) The Trial Examiner found that but for the Company's unwillingness to become the "employer" of unionized workers, the unionized refinery employees would have been placed on the Company's payroll beginning January 1. (TXD 25)

Upon the foregoing subsidiary findings, the Trial Examiner attributed to the Company, as "actual employer or coemployer" (TXD 24), the discharge of Texas Gas unionized refinery workers on February 14 (TXD 24-25), and concluded that by their discharge the Company violated Section 8(a)(3). Accordingly, he found that the Company "by its letter of January 11 and conduct thereafter, unlawfully refused to bargain with the Union as the proven majority representative" of the 72 hourly employees,²¹ in violation of Section 8(a)(5). (TXD 25)²²

²¹ Sixty-nine bargaining unit employees had their dues checked off in February and sent to the Union. (Tr. 236-237).

²² He added (TXD 25, fn. 78): "Even assuming, under other circumstances, that the hourly paid employees were not technically

Board's Decision

The Board, concluding that there was "insufficient evidence to warrant a finding" that the Company was a joint or co-employer of the bargaining unit employees under the operating agreement, made findings contrary to the credited and undisputed evidence, and to the Trial Examiner's findings. The Board found:

(1) "*Quinn did no more than pass upon expenditures in excess of \$500 . . .*" (D&O 3) The undisputed evidence is that Quinn passed on *all* expenditures, notwithstanding the \$500 minimum figure stated on the face of the operating agreement. Moreover, in making this finding, the Board apparently ignored the Trial Examiner's resolutions of credibility. He specifically credited the testimony by General Counsel's witnesses, General Superintendent Neville and Maintenance-Construction Supervisor Ellis, that Quinn gave orders to both operating and maintenance personnel at the refinery, including "orders to Neville, as well as to [Operating Superintendent Kruger], Personnel Director Cating, and Maintenance-Construction Supervisor Ellis." (TXD 10) The Trial Examiner also discredited the contrary testimony of Company witnesses Quinn and Sutherland, who claimed that Quinn's sole responsibilities at the plant were to approve expenditures and "observe" the operations. (TXD 10, fn. 24)

(2) "*Nor do we find that [the Company's] traffic manager, Herrington, directed the work of the rackmen and pumpers employed by Texas [Gas] at the Winnie plant during this period Herrington forwarded sales memoranda either in writing or orally to these employees We find that these memoranda were no more than routine*

employees of [the Company] for purposes of Section 8(a)(5) from January 1 until 4 p.m. on February 14, a bargaining order against [the Company] would appropriately lie as a remedy for the Section 8(a)(3) violation *inter alia*, to deprive [the Company] of any advantage gained in violating the Act for the reasons that it did . . ."

communications between a central traffic department and the department in a particular plant which is responsible for shipping and receiving." (D&O 3) But the Board did not discuss the Trial Examiner's contrary findings, nor mention the undisputed testimony by rackman Keeler that Herrington personally directed the rackmen at the refinery (Tr. 297-298, 304-306), or by Sales Director Wilkinson that Herrington gave instructions to "whomever it might be necessary" for movement of the product from the plant (Tr. 518), or by General Superintendent Neville that Herrington gave instructions to shift foreman by memorandum. (Tr. 113)²³

(3) "*Herrington was employed at the [Company's] Houston sales office . . . which was completely divorced from the production and maintenance facilities at Winnie.*" (D&O 3) This finding disregards the undisputed facts that the refinery rackmen were in the same bargaining unit as the other production and maintenance employees (Tr. 315), were in the same line of promotion as operators (Tr. 314), were employed at the same refinery (Tr. 126), and handled *incoming* products to be used for charge stock in operations, as well as blended and transferred finished gasoline at the refinery's tank farm, and loaded and shipped refinery products by pipelines, trucks, and tank cars (Tr. 297, 312-313, 429), under the personal direction of both the refinery shift foreman (Tr. 312) and Herrington.

4. "*(It has not been contended that the takeover of [Texas Gas'] sales functions by [the Company] constituted evidence with respect to the relationship of the two companies at the Winnie plant.)*" (D&O 3) By this par-

²³ One of the memoranda in evidence directed the rackmen and shift foreman: "In the future, temperature correction on products picked up for delivery to the above named customer, will be figured by the invoicing department in the Houston Office rather than at the Winnie Plant loading rack." (Co. ex. 63-C)

enthetical finding, the Board seems to have overlooked the Trial Examiner's finding that the "overall operation conducted by Texas Gas prior to the operating agreement could not realistically be severed by [the Company] managing the . . . sales . . . activities, without [the Company] exerting control over the plant operation purportedly delegated to Texas Gas." (TXD 24)

The Board did not even allude to the Trial Examiner's other findings on which he also based his concluding finding of co-employer status.

The Board concluded that "in these circumstances the [Company] had no obligation to bargain with the Union," and added: "In this connection we note that Texas [Gas] continued to bargain with the Union with respect to terms and conditions of employment of its employees, including severance pay," both before and after the shutdown. (D&O 3-4) In doing so, the Board failed to rule on the Trial Examiner's finding that the limitations imposed by the Company "would tie the hands of Texas [Gas] in collective bargaining with the plant unions." Apparently the Board also failed to consider the evidence that (a) the Company paid (through Texas Gas) the salary of General Counsel Elliott for negotiating with the Union, (b) the operating agreement required Texas Gas to give the plant employees "due and proper notice" of their termination, and (c) the Company reimbursed Texas Gas for "all direct labor costs," which necessarily would have included the one-week wages given in lieu of notice,²⁴ in order for Texas Gas' monthly fee of \$7,500 to be the "profit" it was.

D. Premature Shutdown Found A Discriminatory Maneuver

The operating agreement covered not only the refinery and terminal, where all the hourly employees were union-

²⁴ Detailed provisions for "severance pay" were already set out in the union agreement.

represented, but also the transportation and gathering systems (pipelines), which were nonunion. However, the agreement contained a provision which permitted the Company to terminate the agreement as to the nonunion parts of the operations without affecting its application to the union parts. (GC ex. 5, par. 13.2)²⁵ Pursuant to this provision, the Company on February 11 (three days before the shutdown), terminated the parts covering the pipelines (Tr. 248) and hired all or substantially all the 50 nonunion hourly and salaried pipeline employees. (Tr. 173; GC ex. 3)

Then on Thursday, February 14, less than a month after the Union had filed a charge with the Board alleging, *inter alia*, that the Company was "threatening to discriminatorily replace experienced union employees with nonunion out-of-state employees" (GC ex. 1(a), p. 2), the Company suddenly (Tr. 121-122, 244-246, 567, 657)²⁶ terminated the remainder of the operating agreement and ordered the plant shut down.²⁷ The approximately 87 hourly employees then on the Texas Gas payroll included 72 operating, maintenance, loading rack, and terminal employees represented by the Union (and involved in this proceeding), and 13 maintenance employees represented

²⁵ In contrast, the operating agreement provided that "neither party may terminate this Agreement as to any portion of the [union] plant or terminal without terminating the Agreement in its entirety." There was no provision for reduction of the \$7,500 monthly fee in the event of its partial termination.

²⁶ At 6:00 a.m., Woolfolk telephoned Neville at his home, and called for a meeting of all office, engineering and supervisory personnel in Neville's office at 8:00 a.m. Simultaneously at the Houston office of Texas Gas, the Company was serving notice of the termination. (Tr. 701)

²⁷ Nothing in the operating agreement nor the December 5 purchase agreement required Texas Gas to shut down the plant before transferring it to the Company. Both of those agreements did require that Texas Gas terminate the employees (GC ex. 4, art. VIII(d); GC ex. 5, art. 13.1), but nothing is mentioned in either agreement about whether the Company would hire the employees (as it did the nonunion employees).

by two other unions.²⁸ Although the nonunion office, engineering, and supervisory employees were transferred on that date to the Company's payroll (Tr. 122-123, 126), the Company ordered all the union-represented employees off the premises. (Tr. 352)²⁹ It kept in operation the loading rack, the Port Neches terminal, and certain refinery equipment needed to continue the flow of natural gas through the pipelines (Tr. 126, 353), but did not retain a single union rackman, terminal pumper, refinery operator, or maintenance man. (Tr. 128) Instead, the Company placed the plant supervisors on an overtime basis, assigning them to shifts of 12 hour on and 12 hours off (Tr. 129, 188), to perform the necessary operating and maintenance work and to train employees from the Company's nonunion gas plants as they were brought in to do work previously done by union employees. (Tr. 129, 137-138, 187, 189, 368)

The Company had ordered a type shutdown which would have required only about eight hours to restore to full operation. (Tr. 128)³⁰ Texas Gas' operators, before leaving the plant, effected this shutdown by 2:00 p.m. (Tr. 127, 352-353) That same Thursday evening, the first contingent of 14 replacement employees from the Company's Texas and Louisiana gas plants arrived (Tr. 137, 354, 647), followed by about 25 or 35 others over the weekend (Tr. 139, 355), to be trained to operate the

²⁸ The Pipe Fitters Local represented eight pipefitters; the IBEW Local represented three electricians and two instrument-men. The remaining 14 maintenance employees were represented by the Union. (GC ex. 2, Tr. 27-28, 76, 336-337, 403-404, 635)

²⁹ The operators were required to leave as soon as they shut down their respective units. (Tr. 124)

³⁰ Pressure was left on the vessels. (Tr. 353) If the shutdown had been for repairs (requiring the depressuring and draining of vessels), it would have taken 48 hours or more to effect that type shutdown, and about the same length of time to resume operations. (Tr. 126-127)

plant. (Tr. 130, 138, 141, 354-355, 624, 644, 710)³¹ They came with substantial amounts of luggage and personal equipment. (Tr. 137, 139, 364-365)³² Then on Sunday, February 17, Sutherland suddenly ordered all of them, except the first 14, to return to their home plants (Tr. 140, 364, 356-367, 624). He explained at the time that the employees had been brought in to operate the plant, but "somebody jumped the gun and got them in too early, so they were sending them out. They [the Company] might get into trouble by having the men there so early." (Tr. 140-141)³³ At the hearing, Sutherland implied that the Company had contemplated the resumption of operations by testifying that "It was my original plan to bring these people in and staff that plant . . ." (Tr. 711); that he undertook to staff the plant following the February 14 shutdown (Tr. 662); that he sent for the replacement employees "for any contingency that might develop" (Tr. 664); that "As far as the immediate plans for start-up or extended shutdown, they were not firm" (Tr. 664)³⁴; and that on February 17, "We were far

³¹ Sutherland claimed at the hearing that he brought in 35 employees to shut down the plant. (Tr. 711-712) However, the temporary shutdown was already completed by the time they arrived; and they were suddenly sent back only after the Company decided to continue the shutdown indefinitely. (Tr. 624) The Company began depressurizing the vessels about March 14. (Tr. 619, 630)

³² Two Pullman cars, with a capacity of about 40 persons, were brought in on February 14 or 15, to augment the available plant facilities for housing employees. (Tr. 190) Woolfolk explained at the time: "They were being brought in to house employees who would be working in the plant." (Tr. 130, 132)

³³ On February 14, the Union telegraphed the Company, requesting a meeting to bargain "concerning the necessity of any partial or total shutdown, . . . the assignment of work during any such shutdown and . . . recall rights." (GC ex. 10)

³⁴ In contrast, President Marshall explained that the plant was shut down on February 14 because the engineering and planning "had been perfected to the point where we were ready to take the plant down and start the conversion . . ." and "We were ready to begin the initial steps, which entailed a complete shutdown of the refinery operation." (Tr. 251-252)

enough along . . . to assume that the extra *two weeks* of trial and tribulation of trying to bring on any facilities from that point would not be justified, so we left the plant down . . ." (Emphasis added, Tr. 713-714)

As of February 17, the Company abandoned its apparent plan to exclude *all* experienced union operators and use only nonunion importees from its other plants. On February 22, the Company invited the terminated refinery workers to write for employment applications. It hired a testing firm which it had never used before (Tr. 735-736), to give a battery of "employment" tests to the applying former Texas Gas employees and to 35 employees in its other plants. However, the Company refused to permit any Union-represented employees who were in maintenance at the time of the shutdown to take the tests (Tr. 668-669), although some of them worked as relief operators (Tr. 402)—and even if the employees had previously worked for years in operations. (Tr. 667-669)³⁵ Before the tests began, Sutherland explained that "the union boys" would be given mental or psychological tests "that probably would eliminate a whole lot of them." (Tr. 145, 191-192)³⁶ Some union employees who passed the tests were then disqualified for other reasons. (Tr. 766) Only 11 of the 72 terminated bargaining-unit employees were finally hired by the Company.³⁷

³⁵ Fluor hired a large majority of the former Texas Gas maintenance employees in the two other bargaining units at the plant but none in the unit represented by the Union — except a carpenter who in fact belonged to a Carpenters Local. (Tr. 409-410). It did this despite the superior ability of some of those not hired, and despite the fact that on several occasions Fluor employees performing similar duties had to be replaced because of unsatisfactory work. (Tr. 336-367, 370-373, 375-377)

³⁶ Vice President Teverbaugh testified that the tests were given because the former Texas Gas employees and its own employees were more people than were needed. (Tr. 774)

³⁷ In June, after the automated controls had been installed and the work of the 27 maintenance employees had been contracted out, the Company had 37 hourly employees on its payroll at the refinery and terminal. (Tr. 696-697)

The surprise shutdown of the refinery came at a time when no repairs or modifications were scheduled to start. (Tr. 143) The Company had been negotiating to have Fluor, an outside maintenance contractor, replace Texas Gas' 27 maintenance employees.³⁸ But the Fluor contract was not signed until February 20 (Co. ex. 9), and for 12 days after the shutdown, the refinery was idle,³⁹ with neither the 27 plant maintenance men nor Fluor employees performing needed repairs.⁴⁰ On February 26, when the first Fluor men arrived, they were only 10 in number for the first week. (Tr. 368, 370, 618, 636)

It was finally admitted at the hearing, by the Company's Area Engineer Neidert, that the refinery could have been kept in operation without a shutdown at least until March 14,⁴¹ when repairs first required a partial or total shutdown. (Tr. 619, 630)⁴² He had not been con-

³⁸ The maintenance agreement was being held in abeyance (Co. ex. 10), until Fluor reached an agreement with the AFL-CIO craft unions for labor to perform "maintenance, repair and renovation work" (but excluding "new construction" work). (Co. ex. 11, art. 1, III) The Company gave no notice to the Union that it intended to subcontract the plant maintenance. (Tr. 253)

³⁹ Except for the pipeline-connected equipment. (Tr. 229)

⁴⁰ The pending maintenance work included the overhaul of two compressors, which Quinn had authorized the plant maintenance employees to perform before the sudden shutdown. (Tr. 119-121) The Company did not explain why any of these employees, and other Texas Gas employees who had maintenance experience, were not permitted to do this necessary maintenance work, at least until the Fluor employees arrived. Maintenance-Construction Supervisor Ellis, who later assisted in supervising the work done by Fluor employees (Tr. 370-373) had been placed on the Company's payroll. (Tr. 123)

⁴¹ Also, Sutherland appeared to admit that the shutdown was premature by testifying that the Company was "far enough along" with the Fluor contract and engineering plans, to assume on February 17 "that the extra two weeks of trial and tribulation" to resume production "would not be justified." (Tr. 714)

⁴² When the penetrating inspections were started about March 14, the Company discovered that the refinery equipment was in

sulted, as Texas Gas' Chief Engineer, about the necessity of a shutdown, and neither he nor other plant supervisors had been given prior notice of the premature shutdown. (Tr. 130, 137, 365-366, 618-619, 629)

Trial Examiner's Findings

The Trial Examiner found, explicitly discrediting Sutherland's denial, that the Company intended to use the employees brought in from other plants to operate the plant after the February shutdown. (TXD 14) He found: "The inferences are compelling that [the Company] had partially shut down on February 14 with the intention of promptly resuming full operations, at least for an indefinite time, . . . with employees from its other plants to be trained by the Winnie plant supervisors . . . until the Fluor people came in." (TXD 22)

The Trial Examiner then credited Neidert's testimony to the effect that "it was not until about March 14 that inspections, with depressurizing and draining, were undertaken leading to the first legitimate curtailment of operations to repair the deteriorated equipment discovered." (TXD 27) He accordingly concluded that "all the Texas Gas production and operating employees would, absent discrimination, have worked until at least March 14" (TXD 27). He explicitly concluded that the Company ordered the shutdown "so that it would not be deemed the employer of the existing hourly paid employees at the plant" and to provide a hiatus in which to effectuate its plan to replace them. (TXD 22)

much worse condition than expected. (Tr. 681) However Neidert revealed that the bulk of the work would likely have been done by Texas Gas if the refinery had not been sold. (Tr. 630-633) The type work was much the same as the plant maintenance employees had done previously. (Tr. 634) They had generally done the major overhauls (or "turnarounds"), with the help of outside employees hired on a temporary basis when needed. (Tr. 100, 178, 337-338) For much of the time, there were about 90 Fluor employees working during the shutdown. (Tr. 635)

In this connection, the Trial Examiner explicitly discredited Sutherland's testimony that refinery workers who were terminated and locked out on February 14, were prevented from communicating with management "to prevent any false information concerning the shutdown to escape from the plant." (TXD 12, fn. 34)

In addition to elements in the evidence supporting his finding that the Company "had laid careful plans pre-dating its actual purchase of the Winnie plant" to restaff it "so as not to be encumbered by an obligation to deal with the Union" (TXD 21-22), the Trial Examiner relied on the following findings, *inter alia*, to support his concluding finding of discriminatory motivation: (1) The Company hired the truck drivers on January 1, "substantially the entire pipeline department of some 50 people" on February 11, and "the existing office, engineering and supervisory forces at the plant" on February 14—all of whom were "unrepresented by a union." (2) "In these extensive hirings, none was subject to the mental tests as were the Union-represented hourly paid employees." (3) "The summary manner in which [the Company] on February 14 accomplished the shutdown and terminations of the hourly paid employees." (4) "The 40-50 employees summoned from its other plants to be *trained* for work at Winnie, without reason for this wholesale transfer except . . . to replace and bar the Union-represented employees." (5) "Submitting screened applicants from among the Union-represented employees to aptitude and personality tests as a guise or show of impartial selection in a competition between [the Company's] employees from other plants and the group represented by the Union." (6) "The ultimate employment of only 11 of the Union-represented group, of 37 hourly paid employees on [the Company's] payroll in June, indicating effective destruction of the Union's majority in the original unit of some 72 employees." (TXD 21-2) The Trial Examiner then found

that it "certainly is no coincidence" that of the various categories of employees at the acquired facilities, the Company "chose to transfer to Winnie only this special contingent from its other plants to fill the jobs of the terminated *operating* employees," in an "elaborate and expensive transfer operation. Perforce, the inference to be drawn is that the availability and use of these 40-50 employees are attributable solely to a purpose of [the Company] of getting rid of the Union-represented employees at Winnie." (TXD 23) Concerning the battery of "employment" tests given the Union-represented employees, he found that if the Company was "going to hand pick the few Texas Gas employees whom it finally hired, there was simply no reason for putting the employees through the elaborate obstacle course of the applications, interviewing, and mental and physical tests—clearly unlike the handling of the other Texas Gas personnel it hired. Quite apparently, the purpose was camouflage and deception." (TXD 19)

The Trial Examiner made a concluding finding that the Company discharged the 72 hourly employees because of their union membership, in violation of Section 8(a)(3), pursuant to the Company's "calculated and fixed resolve to eliminate the preexisting unionized situation at the newly acquired Winnie plant, thereby avoiding a bargaining obligation with the Union when it took over operation of the plant."

He found, alternatively, that *even if Texas Gas was an independent contractor under the operating agreement, and even if the Company therefore was not responsible for the discharges, it violated Section 8(a)(3) upon termination of the agreement, "since it is clear in any event that (a) the Texas Gas hourly paid employees were applicants for employment . . . (b) they were qualified employees for whom there were available jobs after February 14, and*

(c) *they were denied employment for the same discriminatory motive. . .*" (TXD 24-25, emphasis added)

The Trial Examiner found that the Company violated Section 8(a)(5) generally, and also by "failing to notify and consult with the Union concerning the decision to subcontract the maintenance and repair work to Fluor . . ." He also found that the subcontracting was discriminatorily motivated because, *inter alia*: (1) "None of the 14 Union-represented maintenance employees was employed by Fluor, although 10 of the 13 electricians and pipefitters were hired." (2) The Company "refused to consider the Union-represented maintenance employees for any work . . ., even though some of these employees had qualifying experience with Texas Gas in capacities other than maintenance." (3) "The bulk of the repair work done before June 3 became necessary only after [the Company] first discovered in March serious conditions of deterioration in the plant equipment." (4) "And, normally under Texas Gas, maintenance and repair were subcontracted out when necessary, but only as a temporary supplement to the regular crew." (5) "The Fluor subcontract . . . appears primarily to embrace . . . the usual type of maintenance done by the Texas Gas group." (6) "The subcontract would also well serve [the Company's] purposes in breaking up the existing appropriate unit." (TXD 25-26)

The Trial Examiner recommended a remedy which would include reinstatement with back pay for the 72 discharged employees, preferential list for discriminatees if no employment is available, reinstitution of the maintenance department, and bargaining upon request.

Board's Decision

The Board, without discussing the Trial Examiner's detailed findings of discriminatory motivation, concluded:

"We find no evidence in the record to indicate that the shutdown of the plant, or the layoff of the production and maintenance employees, was motivated by union animus on the part of the [Company]. Rather, we find that the parties to the sale consummated their bargain in the manner bargained for and with the legitimate business interests of both in mind." The Board did not explain how compliance with the terms of the purchase agreement reflected the Company's motivation, or what "legitimate business interests" the Board thought the Company had for substituting untrained nonunion importees for unionized refinery workers.

The only other explication is: *"The type of work to be performed at the plant, the products, and the customers for these products, were to be different after the plant was shut down and converted."* But the Board did not mention the Trial Examiner's findings that "The products being produced in June, and theretofore, were basically the same as those produced by Texas Gas" (TXD 16), and even more significantly, "the evidence does not support the facile assertion of [the Company] that higher skills and greater versatility were required—at least beyond those already possessed by the experienced Texas Gas operating employees" (TXD 17); "At no point, up to the time of the hearing and as projected thereafter, were any of the Texas Gas employees rendered unqualified for their same jobs by reason of the asserted program for petrochemical conversion." (TXD 22) While contemplated operational changes undisputably meant that the purchaser did not automatically become, in labor law parlance, a "successor" to Texas Gas as "employer", for the purpose of binding it to the Union's certification or the Union's current contract with Texas Gas" (TXD 3), such changes could not conceivably license the Company to discriminate on grounds of union affiliation in staffing its new operation. *Piasecki Aircraft Corporation*

v. NLRB, 280 F.2d 575, 585-587, 589 (3 Cir.), cert. denied, 364 U.S. 933.

STATUTES INVOLVED

The pertinent sections of the Act are set out in the Appendix, pp. 49-50, *infra*.

STATEMENT OF POINTS

- A. The Board Failed To Meet the Issue As Defined By the Trial Examiner's Findings and Inferences.
- B. The Basis of the Board's Reversal Is An Enigma.
- C. The Board Erred In Failing To Affirm the Trial Examiner's Finding of Discriminatory Motivation.
- D. The Board Erred in Failing to Affirm the Trial Examiner's Finding of Co-Employer Status.

SUMMARY OF ARGUMENT

If, as the Trial Examiner found, the Company's motive for substituting untrained transferees for trained refinery workers related to union affiliation, the Company plainly violated Section 8(a)(3), for discrimination in hiring or staffing a facility is condemned by the Act. The purchaser of a business cannot evade that condemnation by contracting for termination and lockout of the seller's unionized employees, shutting down to create a hiatus, and barring individual employment applications from the locked out employees while effectuating a prearranged plan to substitute nonunion replacements. *Piasecki Aircraft Corporation v. NLRB*, 280 F.2d 575, 582, 584, 585 (3 Cir.), cert. denied, 362 U.S. 933.

The Company's explanation for the substitution, as the Examiner properly found, was clearly specious. An asserted policy of staffing newly acquired plants with non-union personnel from other plants manifestly is dis-

criminatory, at least where, as here, it is applied only against the unionized portion of the complement. *Labor Board v. Erie Resistor Corp.*, 373 U.S. 221, 228, 229-230, n. 8.

Since the shutdown was used to cover substitution *en masse* of nonunion for union workers, it would take a most convincing demonstration that the determination to take over in a shutdown condition was designed "to serve legitimate business interests in some significant fashion" to overcome the "inference of unlawful intention." *American Ship Bldg. v. Labor Board*, 380 U.S. 300, 311. No such showing having been made by the Company, the inference of illegality follows. *NLRB v. New England Tank Industries, Inc.*, 302 F.2d 273, 275-277 (1 Cir.).

The Board gave no indication why it reversed the Examiner, stating merely that it found "no evidence . . . [of] union animus on the part of [the Company]." (DO 3). There is

"nothing in the decision of the Board concerning preponderance of evidence, failure to sustain a burden of proof, or Board acceptance of the basic facts found by the trial examiner, with a different inference drawn therefrom. What we have is a Board statement of disbelief that the facts and circumstances relied upon by the trial examiner on the record as a whole support the finding." *Retail Store Employees Union v. NLRB*, ____ U.S. App. D.C. ____, ____ F.2d ____, 59 LRRM 2763, 2765, decided July 13, 1965.

Moreover, the Board did not even indicate which subsidiary findings the Examiner it adopted and which, if any, it rejected. This case must therefore be remanded for the reasons stated in *Burinskas v. NLRB*, order of this Court of January 8, 1964.

On the Examiner's well supported subsidiary findings, including his credibility findings based on demeanor, the inference of discriminatory motivation is inescapable. The Board's rejection of the Examiner's conclusion suggests

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that it believes direct evidence of union animus is a condition precedent to finding a violation in a case of this kind. That, of course, is error requiring reversal. *Amalgamated Clothing Workers v. NLRB*, 112 U.S. App. D.C. 252, 256, 302 F.2d 186, 190.

To the extent that the Board articulated reasons for rejecting the Examiner's findings on the co-employer issue, the record shows it clearly erred. The Board was clearly incorrect in finding "that Quinn did no more than pass on expenditures in excess of \$500" and did not give orders to supervisors and to the personnel director, and that Herrington did not directly supervise rackmen and helpers.

Even if the Company was not an employer or co-employer prior to February 14, a remedial bargaining order is appropriate to remedy the discriminatory refusal to hire. *Piasecki Aircraft Corp. v. NLRB*, 280 F.2d 575, 591-592 (3 Cir.), cert. denied, 364 U.S. 933.

ARGUMENT

A. THE BOARD FAILED TO MEET THE ISSUE DEFINED BY THE TRIAL EXAMINER'S FINDINGS AND INFERENCES

This case should move in a narrow compass. Since *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, it has been settled that "denial of jobs to men because of union affiliations" (at p. 182), or "[d]iscrimination against union labor in the hiring of men [is illegal, *inter alia*, because it] . . . inevitably operates against the whole idea of the legitimacy of organization. . . . [I]t undermines the principle which . . . is recognized as basic to the attainment of industrial peace" (at p. 185). *Amalgamated Clothing Workers v. NLRB*, 112 U.S. App. D.C. 252, 255-256, 302 F.2d 186, 189-190.

Freedom to acquire a business obviously does not carry authority to staff it discriminatorily (cf. *Shelley v. Kraemer*,

334 U.S. 1, 22), just as freedom to leave a business does not import authority to lock out employees for a discriminatory reason. Change of ownership, with or without projected change in operations, does not alter the fact that

"if all employees are discharged but the work continues with new personnel, the effect is to discourage any future union activities. See *Labor Board v. Waterman S.S. Co.*, 309 U.S. 206; *Labor Board v. National Garment Co.*, 166 F. 2d 233; *Labor Board v. Stremel*, 141 F. 2d 317." *Textile Workers v. Darlington Co.*, 380 U.S. 263, 273, n. 18.

The Examiner found, without indicated disagreement by the Board, that

"[b]y its actions on February 14 [the Company] sought to, and did, accomplish an interim shutdown condition so that it would not be deemed the employer of the existing hourly paid employees at the plant. It was then ready to move in with its prepared personnel from other plants." (TXD 22).

It would seem to go without saying that the purchaser of a business cannot evade the statutory prohibition against discrimination in staffing by shutting down temporarily and preventing the seller's unionized workers from making individual application for employment while effectuating a preconceived plan to substitute imported, untrained, non-union transferees. That, on its face, is "a stratagem or device to evade the policies of the Act *Phelps Dodge Corp. v. Labor Board*, 313 U.S. 177, 194." *Labor Board v. Insurance Agents*, 361 U.S. 477, 499.

Refusal to take applications during a contrived shutdown cannot defeat the right of locked out workers to be considered applicants for jobs the purchaser knows they want. *Piasecki Aircraft Corporation v. NLRB*, 280 F.2d 575, 582, 584, 585 (3 Cir.), cert. denied, 362 U.S. 933.

Discrimination against them obviously cannot be immunized on the theory that by the time the locked out workers were permitted to apply the jobs were filled. *Ibid*; cf. *Druwhit Metal Products Co.*, 153 NLRB No. 35, 59 LRRM 1359, 1361. Transparent as would be such a machination even if there were an extended shutdown prior to substitution, it cannot conceivably withstand scrutiny in this case, where the Company itself recognized (p. 3, *supra*), that premature installation of the nonunion replacements gave the show away.

The Company's asserted policy of staffing all new operations from a "pool" of "surplus" nonunion employees maintained for the purpose does not negative discrimination. In the first place the Examiner found, without indicated disagreement by the Board, that there was no such "pool" and these particular transferees were not "surplus." (TXD 23) Second, even if they were, they replaced only unionized workers. A policy or practice of using "surplus" nonunion employees to replace *only* the members of a unionized unit is blatantly discriminatory. Third, even if the Company's asserted policy of staffing with remote, untrained, rather than available, trained, personnel were uniformly applied against both union and nonunion workers, in the absence of a legitimate business explanation or justification the inference that the policy was merely a sophisticated technique for discrimination would be inescapable. Cf. *Gomillion v. Lightfoot*, 364 U.S. 339, 347; *Cooper v. Aaron*, 358 U.S. 1, 17, 18-19. Uniform application of a discriminatorily motivated policy results in nothing more than "indiscriminate imposition of inequalities." *Shelley v. Kraemer*, 334 U.S. 1, 22.

Substitution of an imported, untrained, nonunion crew for an available, trained, union crew is

"conduct [which] *does* speak for itself—it is discriminatory and it *does* discourage union membership and whatever the claimed overriding justifica-

tion may be, it carries with it unavoidable consequences which the employer not only foresaw but which he must have intended." *Labor Board v. Erie Resistor Corp.*, 373 U.S. 221, 228.

Therefore, if the employer "fails to explain away, to justify or to characterize his actions as something different than they appear on their face, an unfair labor practice charge is made out." *Ibid.* Exculpation is not achieved merely by proclaiming lack of union animus. For "many employers doubtless could conscientiously assert that their unfair labor practices were not malicious but were prompted by their best judgment as to the interests of their business. Such good-faith motive itself, however, has not been deemed an absolute defense to an unfair labor practice charge." *Ibid.*, 373 U.S., n. 8, at 229-230.

Moreover, it would take the most convincing demonstration that the Company's determination to take over in a "shut down" condition was not designed merely to cover the substitution but rather "to serve legitimate business interests in some significant fashion," to overcome the "inference of unlawful intention [here] so compelling that it is justifiable to disbelieve the employer's protestations of innocent purpose." *American Ship Bldg. v. Labor Board*, 380 U.S. 300, 311.

Piasecki Aircraft Corporation v. NLRB, 280 F.2d 575, 582-585 (3 Cir.), cert. denied, 362 U.S. 933 and *NLRB v. New England Tank Industries, Inc.*, 302 F.2d 273, 275-277 (1 Cir.), are precisely in point. Exactly as in *New England*, at 276-277:

"[d]espite the presence of a pool of experienced workers, respondent went to considerable length to replace the union employees with entirely new workers—most of whom had no previous experience on [refinery] operations. Indeed * * * respondent transported some [of the new workers] from as far away as its Cali-

fornian operations. Finally, we note that all of respondent's far flung affiliates function as 'non-union' operations. Taken in context, we believe that it can be fairly said that if not the only reason, the substantial or motivating reason for the respondent's refusal to hire the former employees resided in the fact that the employees were members of the union. As such the respondent's action clearly violates Section 8(a)(3) and (1) of the Act. *National Labor Relations Bd. v. Whittin Machine Works*, 204 F.2d 883 (1 Cir. 1953)."

The Board's failure to follow this line of reasoning, or to so much as refer to these cases upon which the Examiner relied (TXD, p. 25, footnotes 75-78), is, to us, inexplicable.

B. THE BASIS OF THE BOARD'S REJECTION OF THE EXAMINER'S CONCLUSION IS AN ENIGMA

The central issue in this case, of course, is *why* the Company preferred to staff its projected operation with imported, untrained, nonunionists rather than with the trained unionists on the spot. For it is self-evident that determination to take over the plant only in a shut-down condition, after all unionized refinery workers had been discharged, and effectuation of that objective through (1) the management contract; (2) abrupt termination of the contract coincident with precipitous discharge and lock-out of the unionized refinery workers, and (3) immediate substitution of nonunion replacements, were designed to effectuate that preference.

The Trial Examiner spelled out in explicit and convincing detail the circumstantial evidence and the credibility findings upon which he predicated the inference that the preference was dictated by a "calculated and fixed resolve to eliminate the preexisting unionized situation at the newly acquired Winnie plant, thereby avoiding a bargaining obli-

gation with the Union when [the Company] took over operation of the plant." (TXD 25)

The Board did not address itself to any of the Trial Examiner's subsidiary findings or inferences, or indicate why it disagreed. We are vouchsafed only its cryptic conclusion that there is "no evidence * * * [of] union animus on the part of the [company]." (DO 3) In a case of this kind,

"the trial examiner's ultimate finding naturally is drawn by inference from other findings based upon the evidence. The Board's inference should also rest upon some findings. This is underscored by the place accorded to findings of a trial examiner in *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 493-495, which we think requires the Board, in such a case as this, which turns significantly upon credibility, to state more clearly the basis for its disagreement, not merely that it disagrees. For we have the statutory duty of reviewing the Board's decision when petitioned to do so. To perform our function we are entitled to more help from the Board in order intelligently to pass judgment upon its decision. See *Burlington Trunk Lines v. United States*, 371 U.S. 156, 167, recently cited in Judge Washington's dissenting opinion in *Texaco, Inc. v. FTC*, 118 U.S. App. D.C. 366, 375, 336 F.2d 754, 765, *vacated and remanded*, ____ U.S. ____; *Braniff Airways, Inc. v. CAB*, 113 U.S. App. D.C. 132, 306 F.2d 739, and cases cited, cf. *Burinskas v. NLRB*, order of this court of January 8, 1964, and see Section 8(b) of the Administrative Procedure Act, 60 Stat. 242, 5 U.S.C. § 1007(b) (1964).

"* * * We find nothing in the decision of the Board concerning preponderance of evidence, failure to sustain a burden of proof, or Board acceptance of the basic facts found by the trial examiner, with a different inference drawn therefrom. What we have is a Board statement of disbelief that the facts and circumstances relied upon by the trial examiner on

the record as a whole support [an unlawful motive] finding.

"The unquestioned deference due the Board's expertise is not a substitute for an analysis which enables the court to understand, from what the Board sets forth in findings or otherwise, the basis for its ruling. * * *" *Retail Store Employees Union v. NLRB*, ____ U.S. App. D. C. ____, ____ F.2d ____, 59 LRRM 2763, 2765, decided July 13, 1965.

Moreover, inasmuch as the Board did not entirely reject the Trial Examiner's findings, instead adopting them "only to the extent that they are consistent" with his decision (DO 1-2), without specifying which it deems consistent and which not, we are left in doubt as to which findings the Board intended to reject. Plainly, credibility findings based on demeanor cannot be among them. For it is the Board's "established policy not to overrule a Trial Examiner's [credibility] resolutions except where * * * the clear preponderance of all of the relevant evidence convinces it that the resolutions were incorrect." *Phillips Mfg. Co.*, 148 NLRB No. 141, ftn. 1; *Standard Dry Wall Products*, 91 NLRB 544, 545, enforced 188 F.2d 362 (3 Cir.).⁴⁸ In the face of that policy, the overruling by implication of credibility findings based on demeanor would itself be enough for reversal. *Service v. Dulles*, 354 U.S. 363, 372.

On the other hand, if the Examiner's credibility resolutions were not overruled, it is incomprehensible how the Board could have reached the conclusion that there was

⁴⁸ Even apart from the Board policy, it is doubtful if the Board could properly set aside a Trial Examiner's credibility findings based on demeanor absent a very strong showing in record as to their incorrectness. See *NLRB v. Universal Camera Corp.*, 190 F.2d 429, 430 (2 Cir.); *NLRB v. James Thompson & Co.*, 208 F.2d 743, 745-746 (2 Cir.); *Pittsburgh-Des Moines Steel Co. v. NLRB*, 284 F.2d 74, 86-87 (9 Cir.); *Deepfreeze Appliance Div. v. NLRB*, 211 F.2d 458, 461 (7 Cir.); *NLRB v. Kaiser Aluminum & Chemical Corp.*, 217 F.2d 366, 368-369 (9 Cir.).

"no evidence" of union animus. Remand for this reason is as much called for here as in *Burinskas, supra*, where

"* * * [T]he court * * * had difficulty in apprehending the basis for the Board's Order by reason of ambiguities in its Decision deriving from the Board's treatment of the Examiner's findings with respect to the credibility of certain witnesses for the employer and uncertainty as to the extent to which the Board rejected the Examiner's inferences drawn from the evidence found credible * * *."

C. THE BOARD ERRED IN FAILING TO AFFIRM THE TRIAL EXAMINER'S FINDING OF DISCRIMINATORY MOTIVATION

Because the Company indisputably planned to convert the refinery into a petrochemical plant, it was not contended that the Company was a "successor" to Texas Gas. See *NLRB v. Alamo White Truck Service*, 273 F.2d 238 (5 Cir.). Nor was it contended that, qua purchaser, the Company was affirmatively obligated to hire the seller's employees.

The Company's only obligation was a negative one, *not* to discriminate against the refinery employees because of their union membership. *Piasecki Aircraft Corp. v. NLRB*, 280 F.2d 575, 585 (3 Cir.); *NLRB v. New England Tank Industries*, 302 F.2d 273, 275-277 (1 Cir.).

The Board did not challenge or dispute even one of the subsidiary findings and inferences upon which the Examiner predicated his conclusion that this duty had been breached. It did not probe the Company's reason for wanting to take over a shutdown plant, merely finding that this was the Company's desire "at all times." (D&O 2-3) It disregarded without explanation the Examiner's findings that the nonunion replacements were not surplus employees (TXD 23) and were untrained for such work (TXD 22-23), and that there was no legitimate business

reason for an expensive transfer operation to replace the available, fully qualified, operating employees. (TXD 22-23)

The Company's explanation for not going through with its original plans (to have a December 28 shutdown and to restaff the plant when title passed four days later) was that "we simply were not ready to undertake heavy field construction at that time . . ." (Tr. 476-477) But the evidence persuaded the Trial Examiner to discredit this explanation and he found accordingly that the Company gave "effect to other considerations, such as preparedness for staffing the Winnie plant and negotiating with Fluor for subcontracting the maintenance." (TXD 7, fn. 18). Failure of the Company's proffered explanation to stand under scrutiny obviously lent support to his inference of illegal motivation. *NLRB v. Griggs Equipment, Inc.*, 307 F.2d 275, 278 (5 Cir.); *NLRB v. Bird Machine Co.*, 161 F.2d 589 (1 Cir.); *NLRB v. Dant*, 207 F.2d 165, 167 (9 Cir.). Yet the Board did not even mention the point.

Nor did the Board discuss the Company's next maneuver—paying a dissolving corporation a \$7,500 monthly profit for no apparent reason other than to keep the employees temporarily on the seller's payroll—and off the purchaser's. The Board simply ignored the Trial Examiner's finding that the Company failed "to show any plausible or credible reason . . . for entering into the operating . . . agreement . . . and not directly undertaking operation of the plant itself with the existing personnel." (TXD 21, 25).

If all the other maneuvering were insufficient to show union animus, the Company's actions on February 14 in ridding the plant of experienced refinery workers who were union members and replacing them with inexperienced, nonunion, transferees—and then keeping the plant idle unnecessarily for a whole month after it decided

that the replacements had been brought in too early, would place the matter beyond doubt. Yet the Board did not even allude to the Trial Examiner's crucial credibility findings that the Company was motivated by a desire to avoid being "deemed the employer of the [unionized] employees" (TXD 22); that it ordered the plant shut down a full month prematurely (TXD 27), as soon as it was ready "to move in with its prepared personnel from other plants" (TXD 22), that the Company had the "intention of promptly resuming full operations," but suddenly decided to continue the shutdown "when someone jumped the gun, and got [the replacements] in too early," because the Company "might get into trouble by having the men there so early." (TXD 22-23)⁴⁴

Nor did the Board consider the virtual confession of guilt inherent in dropping the plan to eliminate *all* unionized refinery workers and inviting them on February 22 to submit employment applications, pursuant to a less drastic but equally discriminatory substitute policy of subjecting them to individual mental and psychological tests "that probably would eliminate a whole lot of them." (Tr. 145, 191-192) Under the new scheme, the Company continued to discriminate en masse against the maintenance employees, refusing to allow them to take the tests for operating, rackmen, and pumpers jobs, although some of them worked as relief operators while in the maintenance department (Tr. 402), and had previously worked for years in operations. (Tr. 667-669) The Board failed to mention the Trial Examiner's finding that "[s]ubmit-

⁴⁴ Sutherland's explanation, that the employees from other plants were brought in to shut down the plant "did not stand up under scrutiny" and was discredited by the Trial Examiner. (TXD 14) The Supreme Court has held, quoting Judge Learned Hand in *Dyer v. MacDougall*, 201 F.2d 265, 269 (2 Cir.), that the demeanor of a witness "may satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story * * *" *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408.

ting screened applicants from among the Union-represented employees to aptitude and personality tests [was] a guise or show of impartial selection in a competition between [the Company's] employees from other plants and the group represented by the Union." (TXD 22) Nor did it note the Examiner's finding, in view of the fact that only 11 of the 72 were hired, that if the Company was "going to hand pick the few Texas Gas employees whom it finally hired, there was simply no reason for putting the employees through the elaborate obstacle course of the applications, interviewing, and mental and physical tests—clearly unlike the handling of the other [nonunion] Texas Gas personnel it hired. Quite apparently, the purpose was camouflage and deception." (TXD 22)

Disregard of all of these subsidiary findings which point unmistakably to discriminatory motivation suggests that the Board thought that direct evidence of union animus was a condition precedent to finding a violation. If so, it clearly erred, for "Complaints of the kind here are normally supportable only by the circumstances and circumstantial evidence," which must necessarily therefore suffice to prove discrimination. *Amalgamated Clothing Workers v. NLRB*, 112 U.S. App. D.C. 252, 256, 302 F.2d 186, 190; *NLRB v. Bird Machine Co.*, 161 F.2d 589, 592 (1 Cir.); *Hartsell Mills Co. v. NLRB*, 111 F.2d 291, 293 (4 Cir.). Thus the Board here "erred in its approach." *Fruit and Vegetable Packers and Warehousemen Local 760 v. NLRB*, 114 U.S. App. D.C. 388, 390-391, 316 F.2d 389, 391-392; *Local 833, UAW, AFL-CIO v. NLRB*, 112 U.S. App. D.C. 107, 113-115, 300 F.2d 699, 705-707; *Universal Camera, supra*, 340 U.S. at 488, 493.

D. THE BOARD ERRED IN FAILING TO SUSTAIN THE TRIAL EXAMINER'S FINDING OF CO-EMPLOYER STATUS

In finding that the Company, from January 1 to February 14, "did not engage in such activities or possess such

authority over the day-to-day operations of the plant as to warrant a finding" that the Company was a co-employer (D&O 2-3), the Board not only disregarded controlling credibility findings, it obviously failed to consider all the facts and their necessary implications. By hiring on January 1 (the effective date of the operating agreement) the only Texas Gas official who had had responsibility over the plant's day-to-day operations, the Company acquired the same right and power of control over the plant-level salaried and hourly employees it enjoyed on February 14, when all the plant-level supervisors were overtly placed on its payroll. After January 1, no orders came from Texas Gas' headquarters except to "check with Mr. Quinn on everything."

The Trial Examiner credited the direct testimony of General Counsel's witnesses, Neville and Ellis, that on January 1, Quinn "more or less" took over, giving orders to the plant operating and maintenance supervision, and to the personnel director—and discredited testimony by Quinn and Sutherland to the contrary. (TXD 10) He held that Neville's "demeanor and composure on the stand lent conviction to his testimony" (TXD 10, ftn. 24), whereas of Sutherland's testimony that Sutherland and Woolfolk did not give orders in the plant on February 14 while the operating agreement was still in effect he said:

"I am convinced that Sutherland was shaping his testimony in accordance with his judgment on the legal issues at stake in a deliberate effort to relieve [the Company] of responsibility for its actions taken before 4 p.m. on February 14." (TXD 12, ftn. 30)

The Board offered no explanation of its disregard of the Trial Examiner's finding, thus unequivocally based on demeanor. See p. 40, *supra*.

A gross oversight of fact occurred when the Board held:

"The record demonstrates that Quinn did no more than pass upon expenditures in excess of \$500 . . ." (D&O 3).

The undisputed evidence is that Quinn and Gotcher passed on *all* expenditures—despite the \$500 figure stated on the face of the operating agreement.

In holding (D&O 3), that Herrington did no more than issue instructions to the rackmen and pumpers which amounted only to "routine communications between a central traffic department and the department . . . responsible for shipping and receiving," the Board simply ignored the facts, pp. 13-14, *supra*. The Board also overlooked that the Company was compensating Texas Gas for time spent by its General Counsel Elliott in negotiating with the Union concerning pending grievances and a wage reopener, and that while the Company itself was refusing to bargain, it was secretly prohibiting Elliott to agree to a wage increase payable by the Company.

The Board did not address itself to the Trial Examiner's detailed findings that the Company "possessed and exercised in a substantial degree control over the manner and means of the day to day performance under the operating agreement." (TXD 11-13, 23-25) Nor did it mention or treat with the Examiner's finding that the operating agreement, being designed to keep Texas Gas' employees off the Company's payroll, was a "sham." (*Ibid.*).

Inasmuch as no duty on the part of the Company to bargain arose from its mere purchase of the plant, the issue of whether or not the union-represented employees were actually employees of the Company between January 1 and February 14 becomes important. If they were, the Company violated Section 8(a)(5) when it denied its

employer status and refused to bargain with the majority representative of the 72 production and maintenance employees.

However, even if the Company was not a co-employer during that six-week period, a bargaining order to remedy the Section 8(a)(3) refusal to hire violation would be appropriate. *Piasecki Aircraft Corp. v. NLRB*, 280 F.2d 575, 591-592 (3 Cir.), cert. denied, 364 U.S. 933; *Editorial "El Imparcial," Inc.*, 278 F.2d 184, 187 (1 Cir.). The Examiner found that but for the Company's discriminatory motive Texas Gas' hourly employees would have been placed on the Company's own payroll beginning January 1 (TXD 25), and would have worked until at least March 14." (TXD 27)

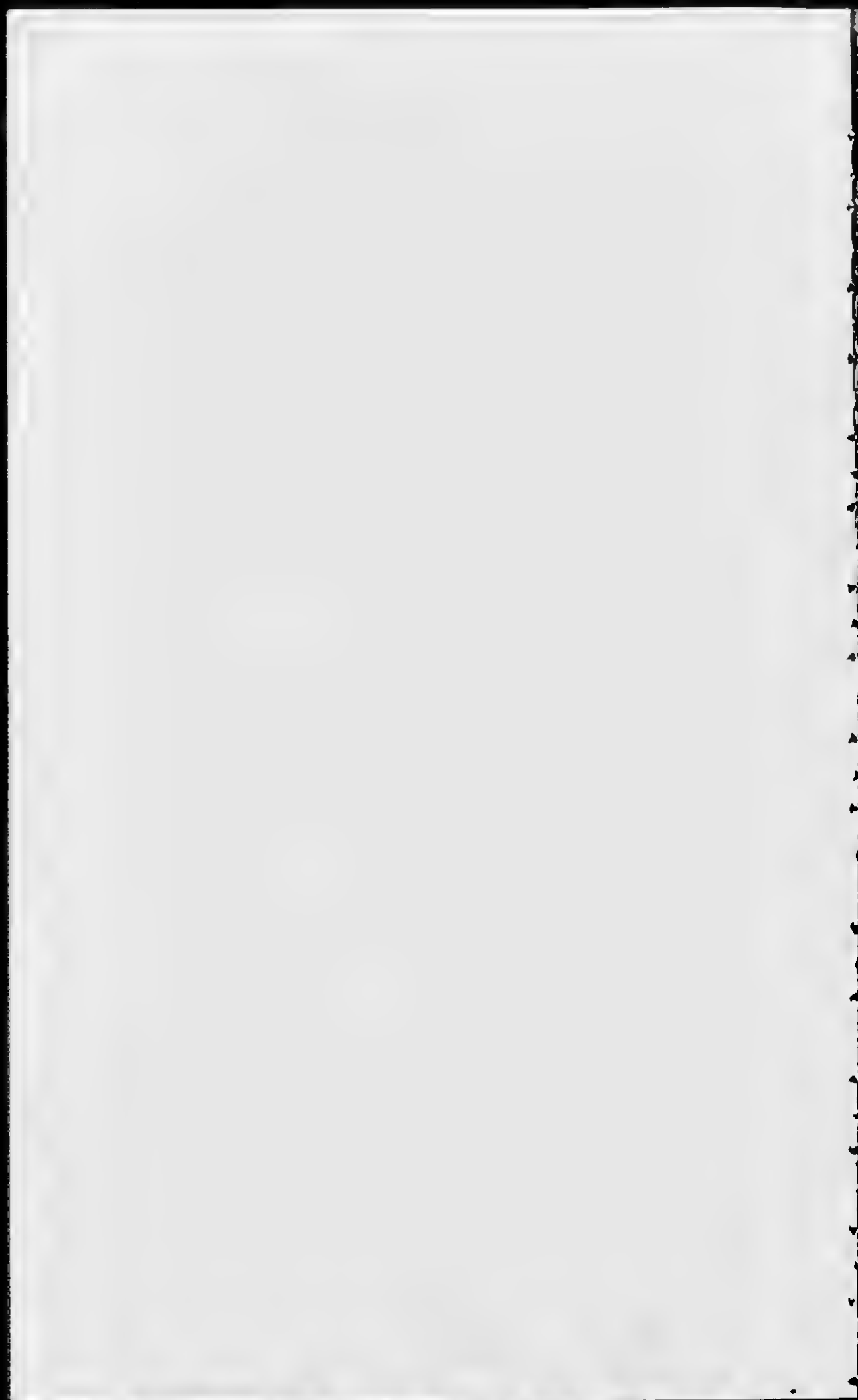
CONCLUSION

For the foregoing reasons, the Board's order dismissing the complaint should be set aside and the case remanded to the Board for further proceedings consistent with the Court's opinion.

Respectfully submitted,

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APPENDIX

STATUTES INVOLVED

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 * * *.

* * *

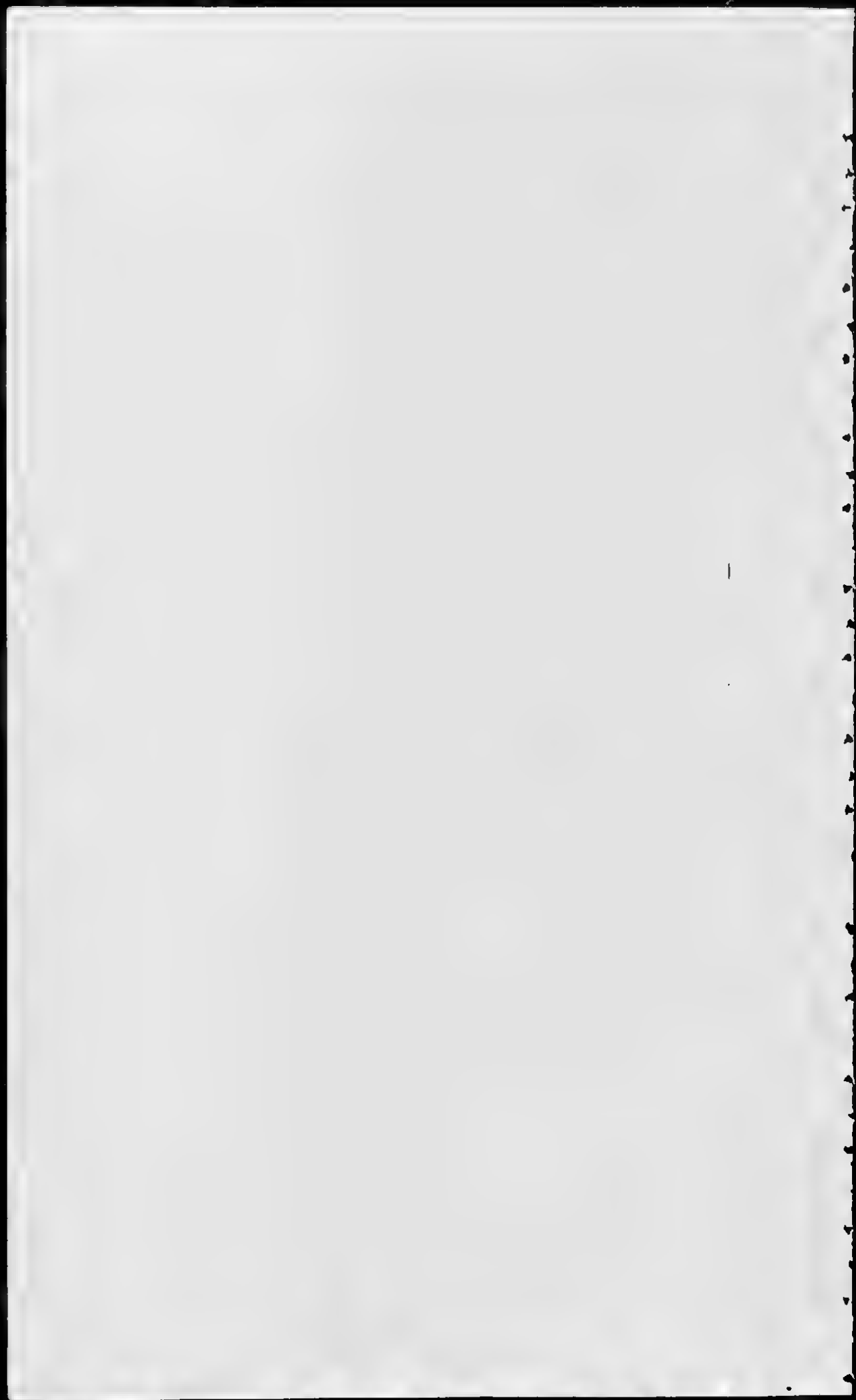
(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

Sec. 10 (e) * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor

practice in question was ~~alleged~~ to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. * * * Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.



BRIEF FOR INTERVENOR
ALLIED CHEMICAL CORPORATION

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,692

OIL, CHEMICAL AND ATOMIC WORKERS INTER-
NATIONAL UNION, LOCAL 4-243, AFL-CIO,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent
ALLIED CHEMICAL CORPORATION,
Intervenor

On Petition to Review and Set Aside an Order of the
National Labor Relations Board

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STATEMENT OF QUESTIONS PRESENTED

Allied Chemical Corporation ("Allied Chemical" or "Intervenor") on December 31, 1962, acquired a gasoline refinery at Winnie, Texas owned by Texas Gas Corporation ("Texas Gas") for the purpose of converting it to a petrochemical plant. For tax reasons Texas Gas insisted upon selling the refinery by December 31, 1962. By that date Allied Chemical had not completed construction contracts and engineering studies necessary for conversion of the refinery to a petrochemical plant. For this reason from December 31, 1962 until February 14, 1963, when these contracts and studies had been completed, the refinery was operated by Texas Gas, as an independent contractor, pursuant to a contract with Allied Chemical. On February 14, 1963, the refinery was shut down by Texas Gas and the production and maintenance employees represented by Petitioner were terminated by Texas Gas.

The questions presented are:

1. Whether substantial evidence on the whole record supports the findings of the National Labor Relations Board ("The Board") that:

(a) Allied Chemical was not the co-employer of the gasoline refinery workers between January 1 and February 14, 1963.

(b) The refinery was shut down and the production and maintenance employees terminated on February 14, 1963 for legitimate business considerations and not because of hostility to the union; and

2. Whether The Board adequately explained the basis for its decision.

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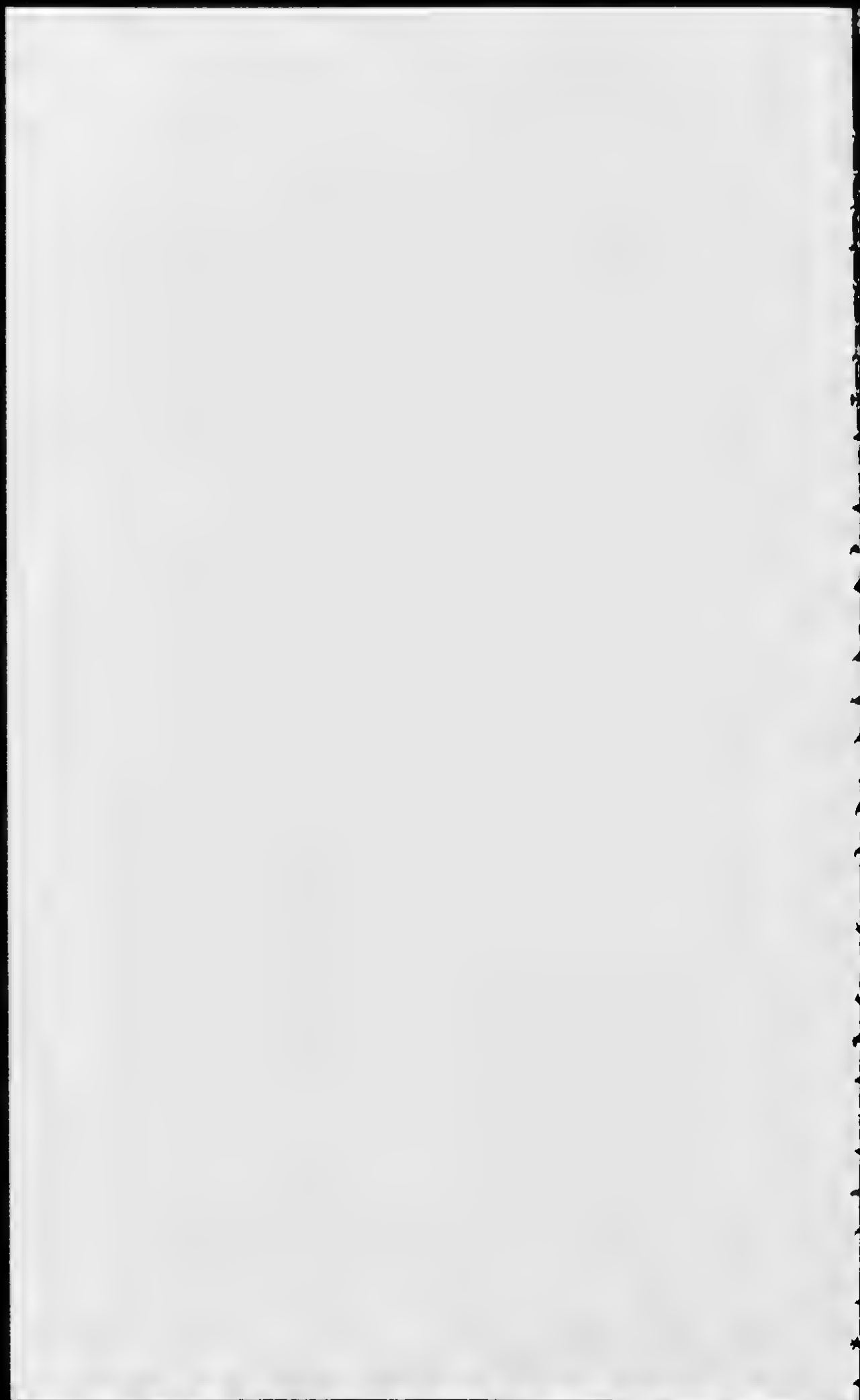
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**BRIEF FOR INTERVENOR
ALLIED CHEMICAL CORPORATION**

INTERVENOR'S COUNTERSTATEMENT OF THE CASE

Allied Chemical is a widespread industrial manufacturing corporation employing thousands of employees in several hundred plants throughout the United States. (Tr. 19) The Complaint filed in this case charged Allied Chemical with discharging employees in a certified bargaining unit because of membership in the Oil Chemical and Atomic Worker's

("Union" or "OCAW") and with refusing to bargain with OCAW generally and particularly about the shutdown of a refinery and sub-contracting construction and maintenance work. G. C. ex. 1E, Pars. 8, 11 and 13.)

Allied Chemical manufactures chemicals and chemical products, but not until recently through the use of petroleum products (Tr. 274, 275). In order to use petroleum as a raw material and to enter the petrochemical field Allied Chemical acquired through merger in 1962, Union Texas Natural Gas Corporation ("Union Texas"), which owned producing oil and gas wells (Tr. 44, 274, 283). Union Texas had 14 plants separating liquid hydrocarbons from natural gas (Tr. 48, 71). The non-supervisory work force of Union Texas was small, averaging only 15 employees per plant (Tr. 649-651), apparently too small for any union to seek to organize, as none did. (Tr. 71, 282, 284, 652). This is to be compared with Allied Chemical in whose plants over 2,000 employees were represented by OCAW (Tr. 19-20), not to mention thousands of other employees represented by other international unions. Union Texas did not, however, have a refinery and, of course, Allied Chemical, just entering the field, did not own or operate one (Tr. 243, 273, 710).

Texas Gas owned a small refinery at Winnie, Texas which it had been trying to sell for years (Tr. 273). It was not attractive to Union Texas nor apparently to any one else as such, but it was interesting to Allied Chemical for conversion to a petrochemical plant. (Co. ex. 5, 6, 7, 8, 24-A, 24-B, 25-A, 25-8, 26, 27, and 64; Tr. 262, 272, 273, 274, 275, 455, 456, 462, 456, 463, 501, 513, 514, 522, 761, 762, 763). Texas Gas also owned another corporation, Texas Gas Pipe Line Corporation (Tr. 472), which was operating as a federally regulated interstate natural gas pipe line. The pipe line was to be included in the sale of certain specified assets to Allied Chemical and was to continue to operate without change—as it has done G.C. ex. 4; Tr. 759, 760).

OCAW represented 69 to 70 Texas Gas employees constituting most of the hourly paid refinery workers (G. C. ex. 6; Tr. 76, 98, 237) though there were 2 other international unions representing craftsmen in the refinery's maintenance department (Tr. 76, 548).¹

An agreement to sell the aforementioned Texas Gas assets, subject to many conditions not relevant to this proceeding, was made on December 5, 1962 (G. C. ex 4). As the refinery was being purchased to be converted to a petrochemical plant (Co. ex. 5, 6, 7, 8, 24-A, 24-B, 25-A, 25-B, 26, 27; Tr. 252, 262, 270, 455-56, 473), Allied Chemical naturally wanted to acquire it in a shut down condition (Tr. 277, 662) so the work of conversion could be expedited (Tr. 277, 278, 615, 662, 756, 757). A schedule made on December 4, 1962 indicated this (Co. ex 66). Allied Chemical employed a petrochemical engineer to guide the conversion, but a European assignment for his previous employer, a consulting firm, kept him absent until December 18, 1962, when he notified Allied Chemical that engineering studies had not sufficiently progressed to commence conversion (Tr. 453, 454, 455, 476, 477), and the schedule of December 4 had to be revised. (Tr. 756-759); Texas Gas, however, insisted for tax reasons that the sale at the agreed price be made by December 31, 1962, or not at all. (Tr. 251, 277) In this situation, Allied Chemical bargained with Texas Gas for an additional contract ("operating agreement") by which the latter would manage the pipeline and refinery on a cost-plus-a-fixed-fee basis for not more than 3 months subject to earlier termination. (Tr. 251, 252, 253, 288-290, 591, 592). By permitting Texas Gas to operate the refinery and pipeline while engineering studies were being completed rather than shutting the refinery down to complete such studies, Allied Chemical shortened the shut down period and minimized financial losses while the studies

1. United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitters Industry and the International Brotherhood of Electrical Workers. These unions did not complain about the sale and conversion of the refinery.

were being conducted. (Tr. 276) When the operating agreement was under consideration Texas Gas notified the unions representing its hourly paid employees and met with them on December 22, 1962 and discussed the impending sale and operating agreement. (Tr. 548-550)²

The operating agreement was signed on December 28, 1962 and the sale took place on December 31, 1962 (G.C. exs. 4 & 5)

Allied Chemical did not purchase all assets of Texas Gas. It did not purchase accounts receivable or 'Texas Gas' good will or its trade name and accordingly on January 1, 1963, instituted a different trade name for the gasoline (G.C. ex. 4; Tr. 69-70, 251-252).

The record clearly reveals the operating agreement was an arm's length transaction particularly in light of the evidence that Mr. Gladden, Vice President of Texas Gas promptly rejected in January, 1963, a letter from an official of Allied Chemical which he interpreted as an attempt by Allied Chemical to limit Texas Gas' control of the refinery. (Co. ex. 17 & 18; Tr. 564-566).

The OCAW collective bargaining agreement expired in March, 1963 and was not by its terms binding on future owners of the refinery. (G.C. ex. 6). OCAW asked Texas Gas for an amendment to make it so but Texas Gas refused. (Co. ex. 13; Tr. 555, 556).

OCAW asked Allied Chemical to bargain with it. (G.C. ex. 8 & 10). Allied Chemical declined. (G.C. ex. 9 & 11; Tr. 58, 59, 60). Copies of the correspondence between the parties were sent by each writer to the Regional Director of the Board. Unfair labor practice charges were filed by OCAW

2. The unions so notified were OCAW, United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitters Industry and the International Brotherhood of Electrical Workers (Tr. 548).

with the Regional Director of the Board in Houston, Texas on January 17, 1963, against Texas Gas, its stockholders, and against Allied Chemical charging in effect a conspiracy against the Union. (G. C. ex. 1A).

From January 1, 1963 to February 14, 1963 — and indeed for 15 days thereafter because of the timing of the notice of termination of the operating agreement — (Tr. 246-247) Allied Chemical paid Texas Gas \$7,500 per month or a total of \$15,000 as management fee, a small sum when it is remembered that Allied Chemical valued the refinery at \$3,500,000. (Tr. 268).

While the operating agreement was in effect, the direction of the refinery working force was exclusively within the control of Texas Gas (Tr. 283, 642, 653, 654, 656, 707, 708) and Mr. Clyde Quinn, Allied Chemical's representative at the refinery, was specifically instructed not to interfere in such matters (Tr. 478, 479, 641). Operation of the refinery was not assumed by Allied Chemical until February 14, 1963 after shutdown by Texas Gas. The officers of Texas Gas continued on its payroll were not employed by Allied Chemical. They continued to direct the operations of the refinery until the shutdown. Some staff services, such as sales and the incidental traffic regulation functions, were taken over by Allied Chemical. (Tr. 66, 247, 300). Mr. R. C. Herrington, a shipping clerk for Texas Gas, was employed by Allied Chemical to do the same work he had performed for Texas Gas. He worked with the sales department in routing finished products to customers and was not responsible for production activities. (Tr. 66, 67, 106, 107, 110, 113, 300, 322, 323, 518). However, key Texas Gas employees such as the refinery General Superintendent, Operating Foreman, Maintenance Superintendent and the Personnel and Safety Director — all primarily responsible for the operation of the refinery and direction of the working force — were not employed by Allied Chemical but continued

to be employed by Texas Gas during the period it operated the refinery as an independent contractor. (Co. ex. 41; Tr. 225, 336, 351, 352, 354, 389, 659).

On February 6, Allied Chemical concluded an agreement with Fluor Maintenance, Inc. ("Fluor") for the conversion and maintenance of the refinery, but this was subject to Fluor's completing an agreement with craft unions to obtain the many necessary craftsmen. (Co. ex. 9, 10, 11 & 12; Tr. 528-532, 540). Although the formal contract was not signed until February 20. (Co. ex. 9), in view of the completion of engineering studies (Tr. 290, 478) and in anticipation of the ability to proceed with the conversion, Allied Chemical terminated the operating agreement with Texas Gas as to the pipeline on February 11 (Tr. 248) and as to the refinery on February 14, 1963. (G.C. ex. 12; Tr. 92, 122, 123, 250, 252, 282, 567, 657, 701).

The general manager of plant operations for the Union Texas Division of Allied Chemical, Mr. John Sutherland, (Tr. 649), had only briefly visited but had not inspected the Winnie refinery (Tr. 652-656). Mr. Sutherland was directed on February 13, 1963 to proceed the next day to Winnie and have a representative of Texas Gas shut the refinery down maintaining only those facilities necessary for continuance of gas deliveries. (Tr. 657, 707). Since Mr. Sutherland was prepared to handle any operating difficulties associated with closing the refinery on December 31, 1962 in accordance with Allied Chemical's original acquisition plans, he used the same plan on February 14, 1963 and assembled at Winnie about 35 Allied Chemical employees accustomed to working with him. (Tr. 664, 709-713).³ Within a short time it was determined

3. Mr. Sutherland testified:

"These men were in there to fight fires, they were in there to drain—if you will remember, this was wintertime, and we had the whole system full of steam condensate, and a freeze up at that time would have done a hundred thousand dollars worth of damage in the condensate return system. These men were to drain the steam system or anything else that was necessary while maintaining the delivery of gas to our pipeline customers." (Tr. 709-710)

that this number of employees was not needed and only a small number remained at Winnie—including inspectors and engineers. (Tr. 623, 624, 627, 665, 714, 768).

Inspection of the refinery revealed a great deal of deterioration which required extensive replacement of equipment. (Tr. 630, 682-686) Although this delayed conversion activities slightly, Fluor moved some equipment into the shut down refinery on February 18, 1963. (Tr. 534) and Fluor personnel arrived February 26, 1963. (Tr. 618) Actual conversion commenced immediately thereafter (Tr. 618) and progressed to such a point that portions of the plant was reopened on June 3, 1963 (Tr. 611). The manner of conversion was so conducted as to make its completion possible thereafter without a further shutdown. (Tr. 611-612).

Meanwhile, OCAW bargained with Texas Gas regarding termination pay for Texas Gas employees covered by the OCAW contract (Tr. 569-571). The termination pay was duly paid by Texas Gas (Co. ex 19, 20 & 21). Having settled with Texas Gas, OCAW filed amended unfair labor practice charges against both seller (Texas Gas) and buyer (Allied Chemical) (G. C. ex 1A). The Regional Director of the Board issued the complaint on April 23, 1962, but only against Allied Chemical, not against the others thus rejecting any theory of a conspiracy. G. C. ex 1 E).⁴

As result of the conversion of the refinery facilities, products were planned to be manufactured at Winnie which were not produced by Texas Gas include N-Paraffin (Co. ex. 8; Tr. 467, 468, 496, 497), xylene (Co. ex. 7; Tr. 494, 495, 496, 497, 499), ortho-xylene (Tr. 495). In addition, there are a number of products which, although formerly manufactured by Texas Gas will be processed by Allied Chemical into a much

4. The charge of conspiracy was later dropped and the Regional Director proceeded only against Allied Chemical. (See G. C. ex 1C)

higher state of purity and quality. (Co. ex. 4; Tr. 456, 457, 458, 459, 460, 461, 462, 486, 487, 488, 491, 492, 510, 511).

Staffing the plant after the shutdown was not pertinent to the issues presented at the hearing before the trial examiner by the General counsel,⁵ but evidence on this point was received and shows that Allied Chemical offered employment to former Texas Gas employees as well as to its own employees. (Co. ex 42, 43, 44, 45, 46; Tr. 666, 773, 774)

Allied Chemical did not assume any employment contracts (Tr. 73, 588) since obviously contracts made for the operation of a gasoline refinery would not be appropriate for a petrochemical plant. Such a plant would use quite different machinery (Co. ex. 5, 25-A, 25-B, 26, 27; Tr. 260, 464 - 469, 615) and only 37 employees as contrasted with about 56 employed in the refinery by Texas Gas (Tr. 100, 696-697) and would require employees of higher versatility. (Tr. 733, 734) The need for higher versatility was fully demonstrated by tests impartially administered by an expert who, while of course he had not performed this service for Allied Chemical before, had done so for many others in the petrochemical field—a field which Allied Chemical was preparing to enter for the first time, and who had administered employment tests to over 150,000 job applicants for industry. (Tr. 720)

The Trial Examiner examined Mr. Harold G. Teverbaugh, Senior Vice President, about the reason for giving tests. Mr. Teverbaugh said there were a number of former refinery employees of Texas Gas who wanted jobs at the petrochemical plant:

"We wanted to offer the opportunity for these employees of ours and those of Texas Gas to be given an opportunity to apply for these jobs.

"There was only . . . we did not feel that we could give interviews. We reviewed this thing thoroughly

5. Counsel for the General Counsel at the hearing before the trial examiner is referred to herein as "General Counsel."

and how we could do it unbiased, and we felt that the tests, plus physical examinations, plus their work records previous to this time would be used as the basis for selecting the employees for the plant." (Tr. 773)

Actually 34 former Texas Gas employees did not meet even the *minimum* tests for petrochemical employees. (Co. ex 60 & 61). Indeed, 14 Allied Chemical employees from other plants failed to meet the minimum tests for such work. (Co. ex 60 & 61). Of course, among those who passed, there were varied grades. Former Texas Gas employees were given 11 jobs. (Co. ex 60 & 61) Allied Chemical employees from other plants were given 26 jobs, and those who did not pass the tests were retained in their less exacting jobs at Allied Chemical plants. (Tr. 774).

Apparently relying on *Kovach v. N.L.R.B.*, 222 F. 2d 138 (7th Cir. 1956), the Union did not file its petition for review until more than 60 days subsequent to the Decision and Order of the Board.

SUMMARY OF ARGUMENT

I. The position of the Petitioner before this Court as expressed in its brief is at variance with the Complaint and the brief within itself contains conflicting positions.

II. Originally OCAW charged that there was a conspiracy between Texas Gas, as seller, and Allied Chemical, as buyer, to injure the union and its members. The General Counsel did not agree and did not proceed on the charge of conspiracy.

III. Originally, also, OCAW claimed that Allied Chemical was bound by OCAW's agreement with Texas Gas or alternatively bound to bargain with OCAW, but now admits that it is incorrect on both points. See brief for Petitioner page 41. "The Company's only obligation was a negative one, not to

discriminate against the refinery employees because of their union membership."

IV. Although OCAW bases this statement on *Piasecki Aircraft Corporation vs. N. L. R. B.*, 280 F. 2d 575, it ignores the holding of that case that the General Counsel has the right to choose the basis for his complaint and the General Counsel explicitly rejected any theory that Allied Chemical was discriminatory in staffing the plant after its shutdown for conversion.

V. While the Union now admits that Allied Chemical planned to receive the refinery in a shutdown condition to convert the refinery into a plant which would produce at least 65 per cent petrochemicals (Br. for Petitioner 5) and now admits that Allied Chemical is not a successor to Texas Gas and was not obliged to hire seller's employees, much of its brief is devoted to arguments challenging its own admissions.

VI. The Complaint filed against the Company was that Allied Chemical actually operated the refinery from January 1 to February 14, 1963, and that Texas Gas acted as agent for Allied Chemical during this period and that the shutdown on February 14 and the termination of employment was not for business reasons but because of alleged union hostility.

VII. The Board noted that OCAW bargained with Texas Gas during the January 1 - February 14 period and thereafter until severance pay was bargained for and paid, and if the Board had not found that Texas Gas was indeed an independent contractor this settlement would have been on behalf of Allied Chemical.

VIII. Although OCAW complains that the Board did not explain its conclusions the Decision of the Board and the record show:

i. Allied Chemical bought a gasoline refinery to convert it to a petrochemical plant. A contract with the seller, Texas Gas, that the latter would operate the refinery for a short period and then shut it down for conversion to a petrochemical plant was for legitimate business reasons and not because of union hostility.

ii. The operating agreement by its terms and by its administration made the seller an independent contractor with exclusive authority to operate the refinery and direct its personnel.

iii. The sale and operating agreement were arms length transactions between unrelated companies. Allied Chemical did not become a party to Texas Gas employment contracts or collective bargaining agreements and since the gasoline refinery was converted to a petrochemical plant, Allied Chemical did not become a "successor" to Texas Gas, as that term is applied in labor law.⁶

iv. Accordingly Allied Chemical did not become the employer or "co-employer" of Texas Gas employees and had no obligation under the Act to recognize or bargain with OCAW.

v. The shutdown of the refinery six weeks after its purchase was not a device to terminate employees because of union membership, but was necessary for conversion of the refinery.

vi. Clearly the General Counsel had the right to choose the basis upon which the complaint should rest—which was that Texas Gas was the agent of Allied Chemical for the six weeks the operating agreement was in effect and that the termination of employees by Texas Gas when

6. It is well settled that a purchaser of a business is not a successor under the federal labor laws if the employing enterprise is substantially changed, *N.L.R.B. vs. Alamo White Truck Service, Inc.* 273 F. 2d 238 (5th Cir.).

the refinery was shut down was because of union hostility. The Board correctly rejected these contentions on proper findings and articulated its reasons.

vii. Subsequent rehiring was not made an issue of the complaint but evidence on that subject was admitted which clearly revealed that discrimination against former employees of Texas Gas because of union membership was not involved.

IX. The Board made findings that properly disclose the reasons for its ultimate conclusions.

ARGUMENT

The General Counsel of the Board at the hearing before the Trial Examiner presumably considered this case some sort of an extension of the *Town and Country Manufacturing Co. v. N.L.R.B.*, 316 F. 2d 846 (5th Cir.) and *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203 (1964) but to do so had first to show Allied Chemical was somehow the employer of the Texas Gas employees represented by the Union despite the fact Allied Chemical had no collective bargaining agreement with the Union and had merely recently purchased certain assets from Texas Gas. Since Allied Chemical had undertaken the task of converting the refinery to a petrochemical plant, the General Counsel did not contend that Allied Chemical was a successor to Texas Gas Co. Deprived of the successor theory, the General Counsel was forced to rely heavily on the operating agreement between Texas Gas and Allied Chemical. Pursuant to that agreement Texas Gas operated the refinery for a short time pending its shut-down for conversion. The General Counsel contended that as a result of the operating agreement Allied Chemical and Texas Gas "wittingly or unwittingly" became "joint or co-employers"

of the Texas Gas employees. The Board rejected this theory. We believe the Board was correct and that it adequately explained the basis for its rejection.

I

TEXAS GAS WAS AN INDEPENDENT CONTRACTOR DURING THE PERIOD JANUARY 1, 1963 TO FEBRUARY 14, 1963, AND THE REFINERY EMPLOYEES DURING THIS PERIOD WERE EMPLOYEES OF TEXAS GAS, NOT OF ALLIED CHEMICAL.

To find Allied Chemical violated Sections 8(a)(1), (3) and (5) of the Act, as alleged in the complaint, it must be found that the employees operating the refinery from January 1, 1963 to February 14, 1963 were employees of Allied Chemical. Such a finding can only be made if it is concluded that Texas Gas was not an independent contractor during the aforementioned period (and thus Texas Gas employees were employees of Allied Chemical), or, if Texas Gas was indeed an independent contractor, that Texas Gas and Allied Chemical were in fact co-employers during the critical period, January 1, 1963 to February 14, 1963, and as a result, production and maintenance employees at the refinery were in fact employees of both Allied Chemical and Texas Gas. The co-employer theory must surely fall because (a) the evidence, as discussed below, not only fails to support such a theory, but clearly shows that Texas Gas was exclusively vested with the right to control the ways and means of operating the refinery and exclusively exercised that right; (b) such a contention was not made in the complaint and (c) a complaint was not issued against Texas Gas, which would at a minimum appear to be reasonable if Allied Chemical and Texas Gas were considered co-employers by the Board Regional Director.⁷

7. See page 7 supra.

The Union now agrees Allied Chemical was not the successor to Texas Gas, therefore, that reason for insisting upon bargaining rights falls, *N.L.R.B. v. Alamo White Truck Service, Inc.*, 273 F. 2d 238 (5th Cir.), though bargaining may be imposed by the Board as a penalty for discriminatory hiring. *Piasecki Aircraft Corporation v. N.L.R.B.*, 280 F. 2d 575 (3rd Cir.). Here, however, the General Counsel who, under the *Piasecki* case has the right to determine the basis upon which a complaint shall be issued⁸ explicitly excludes discriminatory hiring from the complaint.⁹

Nevertheless, Petitioner's Brief goes into much detail to try to show there really was not a conversion despite Petitioner's admission that because of the "intended" conversion Allied Chemical was not a successor to Texas Gas. This conclusion was also the conclusion of the General Counsel, hence the Board did not apparently see any need of discussing details not really relevant to the theory of the case. Neither do we think we should burden the Court with such a discussion. Rather we address ourselves as did the Board to the point that the operating agreement did in fact make Texas Gas an independent contractor and it operated as such through the shutdown of the refinery on February 14, 1963.

The Board specifically found there was insufficient evidence to warrant a finding that the relationship between Allied Chemical and Texas Gas was one of "joint or co-employers or one of agency" and consequently, Allied Chemical was not the employer of the Texas Gas employees represented by Petitioner.

8. "At the hearing, the General Counsel did not allege that the Respondent was under a duty to bargain as the result of a contractual obligation and he at no time took the position that the aforesaid agreement was binding upon the Respondent. It is the General Counsel who determines the scope of the complaint and none of the other parties may amend, enlarge or modify its allegations. *Piasecki*, supra p. 587. "The Board was within its province in according determination of the scope of the complaint to the General Counsel, Section 3 (d), who did not contend that *Piasecki* was contractually obligated to bargain with the Union."

9. Page 12 supra.

The Board's specific finding on this point was:

"During the 6-week period between December 31 and the February 14 shutdown date, the Respondent assumed the responsibility for the cost of running the plant but engaged Texas¹⁰ to operate it on a cost plus a fixed fee basis. In our view, the record contains insufficient evidence to warrant a finding that, during this period, the relationship between the Respondent and Texas, under which Texas operated the plant, was one of joint or co-employers or one of agency, which would constitute Allied the employer of the Winnie employees and obligate it to bargain with the Union representing these employees." (D & O p. 2)

This ultimate finding that Texas Gas was indeed an independent contractor is followed by subsidiary findings of the Board that Allied Chemical employees were not, as had been contended by the General Counsel, controlling the refinery operations:

"...we find that the Respondent's representative, Quinn, who was assigned to the Winnie plant during the December 31 - February 14 period, did not engage in such activities or possess such authority over the day-to-day operations of the plant as to warrant a finding that the Respondent was a joint or co-employer with Texas (or that Texas was the Respondent's agent).

* * *

"Nor do we find that the Respondent's traffic manager, Herrington, directed the work of the rackmen and pumpers employed by Texas at the Winnie plant during this period. Herrington was employed at the Respondent's Houston sales office which had taken over Texas' sales functions, but which was completely divorced from the production and maintenance facilities at Winnie. (It had not been contended that

10. The Decision and Order of the Board refers to Texas Gas as "Texas."

the takeover of Texas' sales functions by the Respondent constitutes evidence with respect to the relationship of the two companies at the Winnie plant.) "Herrington forwarded sales memoranda either in writing or orally to these employees. The memoranda contained information as to the number of the truck or tank car to be loaded; the scheduled arrival of barges; the type of product to be loaded on, or unloaded from, the truck, tank car, or barge; and the amount of the load. We find that these memoranda were no more than routine communications between a central traffic department and the department in a particular plant which is responsible for shipping and receiving." (D & O p. 2, 3)

The record is replete with evidence that neither Quinn nor Herrington acted in a manner which would vitiate the independent contractor status of Texas Gas.

QUINN

The only illustration of any action by Quinn with respect to personnel is found in Mr. Neville's¹¹ testimony, thus:

"A. Mr. Gladden told me . . . my secretary left about that time. And he said I couldn't hire another one or any new personnel without checking with Mr. Quinn, getting an O. K. from Texas Petroleum."

* * *

"A. I told Mr. Quinn about it and suggested we try to make out with the girls we had, and he said "That's fine, go ahead'." (Tr. 118-119)

The only testimony as to Mr. Quinn's participation in operations comes from another temporarily hired supervisor. Mr. Ellis stated:

"A. And that on the tour while they were gauging the tanks, it was noted and called to the attention

11. R. T. Neville, Plant Superintendent for Texas Gas, temporarily hired by Allied Chemical on Feb. 14, 1963.

... called to his attention there were a couple of loose boards laying between Tank 52 and Tank 53; and that we should get them up right away." (Tr. 341)

Texas Gas was obligated by paragraph 3.1 of the operating agreement (G.C. ex. 5) to operate and maintain the property. Allied Chemical reserved the right under paragraph 3.4 to request Texas Gas to perform other work but there is absolutely no evidence that Allied Chemical ever did or that Texas Gas did anything other than to continue as it was operating prior to the sale. Allied Chemical was, of course, obligated to furnish equipment.

Texas Gas was operating on a cost-plus-a-fixed-fee basis so Allied Chemical was obliged to reimburse Texas Gas for expenditures, but Allied Chemical reserved the right, indeed assumed the duty of supplying equipment and materials but authorized Texas Gas to buy small tools and equipment not to exceed \$500 and emergency items. (G.C. ex. 5, Para. 3.6).

There is no evidence of any purchase of any emergency item or of any small tool so there is no evidence of the application of these exceptions. The Board correctly found that "... Quinn did no more than pass upon expenditures in excess of \$500 including items involving major repairs of existing equipment, all of which if not scrutinized by the Respondent might have resulted in waste when the conversion was undertaken." (D & O p. 3) The record reveals Quinn reviewed such major repair projects as repair of a boiler feed line (Tr. 345), retubing of a high pressure steel condensor (Tr. 346, 347) and whether or not to replace deteriorating switch gear. (Tr. 347, 348).

Paragraph 5 of the operating agreement provides for Allied Chemical approval of bills — that is to determine if the charges are proper under the agreement, and Quinn explained.

"Allied Chemical at each plant has one person who is designated or whose signature is designated to approve all bills. If this approval is not on the bill, it is sent back to the plant for that approval. And with the operating procedures, all the bills would come back to me, all the invoices would come back to me for approval, as they came into the Houston office, before payment was made on them." (Tr. 641)

This was only a matter of initialing to show that the work was performed, not a matter of prior approval.

HERRINGTON

On January 1, 1963, Allied Chemical left the operation of the natural gas pipe line system and the gasoline refinery to Texas Gas under the operating agreement and assumed only responsibility for marketing products—a function which had theretofore been directed from the Houston office (not the Winnie refinery) of Texas Gas.

Some effort was made at the hearing before the trial examiner to have it appear Mr. Herrington was directing work for Allied Chemical. Mr. Neville said Mr. Herrington was traffic "Manager" (Tr. 106) and that he was partially under "the sales department in Houston and my supervision". (Tr. 107) Mr. Neville said that Herrington's job did not change in any way after the purchase by Allied Chemical. (Tr. 109) The instructions which Mr. Neville said Mr. Herrington would give were what products to load (Tr. 110) which was, of course, related to sales.

Asked specifically by the General Counsel "Would he give instructions of any nature?", Mr. Neville replied, "No, I don't believe so." When Mr. Neville was pressed the best he could testify was "Well, that is the moving of the product, yeah, he would say where to deliver it and how much to deliver." (Tr. 110) Naturally, this was unsatisfactory testi-

mony, so again Neville was pressed to agree that Herrington would give written instructions to shift foremen about deliveries, but Neville added, "One copy would come to the shift foreman, one copy to the operating superintendent, and one to me." These memos were continued in effect after January 1, 1963. (Tr. 114)

The effort to make an active participant in the management of the refinery out of Herrington was renewed with witness Keeler, a former Texas Gas rackman. He confirmed that all Herrington did was to say what products were to be delivered to whom, both before and after January 1, 1963 (Tr. 298, 299), but he made it clear that the witness was responsible to his own foreman and not to Herrington. He also testified that Herrington had nothing to do with production before or after January 1 and that his duties both before and after the sale only:

"... related to the sale and delivery, rather than the production, of the gasoline ..." (Tr. 313, 314)

This testimony is confirmed by Mr. Paul Wilkinson, Director of Petrochemical Sales for Allied Chemical:

"Q. Did he (Herrington) at any time after January 1, 1963, have any authority or any function in connection with the production activities of the Winnie plant?

"A. Absolutely not." (Tr. 516)

Clearly the conclusion of the Board that the duties and activities of Herrington did not destroy the independent contractor relationship between Allied Chemical and Texas Gas is fully supported. Indeed there is nothing substantial in the record to question it.

It is not disputed by Petitioner that the operating agreement is couched in terms which show Texas Gas was indeed

an independent contractor, for Texas Gas was "free of control or supervision of Allied Chemical as to means and method of performing the contract . . ." This was well understood by all concerned. Mr. Neville, Plant Superintendent for Texas Gas, settled this point thus:

"Q. Insofar as you knew, you were working for Texas Gas until 4:00 P.M. on February 14, 1963, that's correct, isn't it?

"A. Yes." (Tr. 196)

Mr. Neville said:

"A. I had the responsibility and charge of the plants in (sic.) the Deepwater Terminal. (Tr. 550)

With this background it should be noted Mr. Ellis said Mr. Neville told him on several occasions of the nature of the operating agreement. (Tr. 408).

It was not contended that Allied Chemical at any time from January 1 through February 14 attempted to tell Texas Gas what employees to assign to what jobs, what employees to require to be present, what employees to permit to be off duty, what employees to work overtime, what discipline, if any, to apply to what employees, how to dispose of any complaints or grievances that any of such employees might make, or to direct in any way performance of the work Texas Gas had agreed to undertake. During all this period, Mr. Neville said it was his duty to report daily to Mr. Gladden, Executive Vice President of Texas Gas (Tr. 114). Thereafter, as noted on page 7, Texas Gas negotiated and settled severance pay with OCAW. As the Board concluded that Texas Gas was an independent contractor, while it noted this severance settlement, it was not called on to say that if Texas Gas had indeed been agent for Allied Chemical, this settlement too would have been for Allied Chemical.

Various circuit courts have recognized as settled law the view of the Board that the essential test in cases involving the presence or absence of an independent contractor is whether there is a "right to control" the acts of the alleged independent contractor, on the one hand, or whether he is free to exercise a degree of independent judgment. In *N.L.R.B. v. A. S. Abell Company*, 327 F.2d 1, (4th Cir.), the Court noted:

"As stated in *National Labor Relations Board v. Steinberg*, 182 F.2d 850, 857 (5th Cir. 1950):

' . . . The usual test employed for determining the distinction between an independent contractor and an employee is found in the nature and the amount of control reserved by the person for whom the work is done, and the employer-employee relationship exists only where the employer has the right to control and direct the work, not only as to the result to be accomplished by the work, but also as to the manner and means by which that result is accomplished. It is the right and not the exercise of control which is the determining element.'

Thus, the critical distinction between an independent contractor and an employee is found in the nature and amount of control reserved by the person for whom the work is done. The test, however, admits much more readily of statement than of application. Resolution of the question must depend largely upon the peculiar facts of each case. Moreover, no single factor is controlling and the totality of the circumstances must be considered." 327 F.2d 4-5.

Similarly, in *N.L.R.B. v. Nu-Car Carriers*, 189 F.2d 756, the Third Circuit after noting that the term independent contractor is not defined in the Act, commented as follows:

"The Restatement of Agency does not define independent contractor either, but it gives a list of matters of fact to be considered in deciding whether

one acting for another is a servant or an independent contractor. It states, however, that "The important distinction is between service in which the actor's physical activities and his time are surrendered to the control of the master, and service under an agreement to accomplish results or to use care, and skill in accomplishing results." Restatement Agency § 220 (1933). We may add to this Judge Learned Hand's statement: "The test lies in the degree to which the principal may intervene to control details of the agent's performance; and that in the end is all that can be said * * *" *Radio City Music Hall Corp. v. United States*, 2 Cir., 1943, 135 F.2d 715, 717."

The Court then concluded:

"The test for determining whether the employer-employee relationship exists is right to control, not the actual exercise of control." 189 F.2d 759.

In *N. L. R. B. v. Servette, Inc.*, 313 F.2d 67 (9th Cir.), the Court recognized all cases are not free from doubt, but found that where there was a good faith business reason for establishing an independent contractor relationship such as existed even though "* * * some elements of the relationship suggest an employer-employee relationship * * * taken over-all, we feel that the drivers became independent contractors." 313 F.2d 71. See also *Minnesota Milk Company v. N.L.R.B.*, 314 F.2d 761 (8th Cir., 1963); *N.L.R.B. v. Lindsay Newspapers, Inc.*, 315 F.2d 709 (5th Cir.).

The necessity and justification for entering into an independent contract with Texas Gas can best be summarized by resort to the Decision and Order of the Board and the Brief for the Petitioner.

The Board's Decision and Order:

"The record demonstrates that the plant was shut-down and that all of the production and main-

tenance employees were terminated prior to the Respondent's physical take-over of the premises, as had been originally planned by the parties to the sale of the plant. There was never any deviation from the intent of the Respondent to receive and the intent of Texas to transfer, a shut-down plant. The type of work to be performed at the plant, the products, and the customers for these products, were to be different after the plant was shut-down and converted." (D & O p. 3)

Contrary to the assertion of the Union that the "Board gave no indication why it reversed the Examiner (Brief for Petitioner, p 33) the foregoing clearly reveals that the Board conducted a detailed examination of the record and set forth reasons for its findings.

The Brief for Petitioner:

(a) Brief for Petitioner, p. 5:

"It is uncontested that the Company planned to convert the refinery into a plant which would produce at least 65 per cent petrochemicals (Tr. 513-514) and a higher octane gasoline. (Tr. 500, 502-503)."

(b) Brief for Petitioner, p. 4:

"These new units were designed to further process petroleum or petroleum products, to convert them into "petrochemicals" for utilization by the parent company and for sale. (Tr. 260, 275, 458-459, 491-492, 500-501)."

(c) Brief for Petitioner, p. 6:

"It is also uncontested that the Company planned, when the December 5 "Purchase Agreement" was signed, to receive the gasoline refinery in a shut-down state and to replace the refinery employees."

(d) Brief for Petitioner, p. 10:

"It is uncontested that, for tax reasons, Texas Gas insisted upon concluding the sale by December 31. (Tr. 251)."

(e) Brief for Petitioner, p. 31:

". . . contemplated operational changes undisputably meant that the purchaser did not automatically become, in labor law parlance, a 'successor' to Texas Gas as 'employer,' for the purpose of binding it to the Union's certification or the Union's current contract with Texas Gas. (TXD 3)."

(f) Brief for Petitioner, p. 41:

"Because the Company indisputably planned to convert the refinery into a petrochemical plant, it was not contended that the Company was a 'successor' to Texas Gas. See NLRB v. Alamo White Truck Service, 273 F.2d 238 (5 cir). Nor was it contended that, qua purchaser, the Company was affirmatively obligated to hire the seller's employees.

(g) Brief for Petitioner, p. 41:

"The Company's only obligation was a negative one, not to discriminate against the refinery employees because of their union membership. *Piasecki Aircraft Corp. v. NLRB*, 280 F.2d 575, 585 (3 Cir.); *NLRB v. New England Tank Industries*, 302 F.2d 273, 275-277 (1 Cir.)."

II

ALLIED CHEMICAL'S ACTIONS WERE BASED ON LEGITIMATE BUSINESS REASONS AND DID NOT REPRESENT UNION ANIMUS

The Union argues, even though Allied Chemical was not the employer, the shutdown of the refinery was not for business reasons but because of hostility to OCAW.

On this point the Board said:

"We find no evidence in the record to indicate that the shut-down of the plant, or the lay off of the production and maintenance employees, was motivated by union animus on the part of the Respondent." (D & O. p. 3).

The Union takes this to mean only that the Board did not find any direct evidence of union animus and that the Board erroneously thought that such a finding was a condition precedent to finding a violation of the Act. The Union cites *Amalgamated Clothing Workers vs. N. L. R. B.*, 112 App. D. C. 252, 265; 302 F. 2d 186, 190.

The clarity with which this Court approved circumstantial evidence in the cited case could not have left the Board confused. The decision of the Board in the instant case does not warrant such criticism for the Board knows that matters of animus can often only be inferred from actions taken. Indeed the Trial Examiner referred to cases on this point in his report and we reviewed them in our brief to the Board as follows:

"*N.L.R.B. v. Link-Belt Co.*, 311 U. S. 584, 61 S.Ct. 358 is cited among other cases, by the Trial Examiner as authority that discrimination against employees because of union activities is supportable only by circumstances and circumstantial evidence (TXD page 24, lines 52-53) and this is followed by the statement that the terminations on February 14, 1963 'were effected as a direct consequence of Respondent's calculated and fixed resolve to eliminate the pre-existing unionized situation . . .' (TXD page 24, lines 53-54; page 25, lines 1-3). Such an analysis ignores factually the physical need to close the plant, testified to unequivocally by Mr. Neidert, a witness whose credibility the Trial Examiner accepts (TXD page 15, lines 49 and 50), who testified as to expensive changes which have taken place and it also ig-

nores the fact that the closing lasted from February 14, to June 3. Finally the Trial Examiner based his anti-union conclusion largely on the fact that in hiring employees only about one-third came from the former Texas Gas employees. (TXD page 22, lines 20 through 23)."

The Trial Examiner at the hearing, at the conclusion of the General Counsel's case, said "I have frankly seen very little and again, the record will have to be studied, but there is very little here, if anything at all, on union animus." (Tr. 452).

The Trial Examiner's surprising finding of union animus in his decision despite his comment at the hearing was based wholly on conjecture and of partial statements taken out of context. The Board is, of course, entitled to make its own inferences.

Thus, the United States Court of Appeals for the First Circuit said in *Editorial "El Imparcial," Inc. v. N.L.R.B.*, 278 F.2d 184, 187:

"However, we believe that the inference of such purpose is a matter best left to the Board with its vast experience in dealing with labor disputes. Such inferences, if reasonable, are not to be set aside by the Court."

The issue in the present case is not whether an admittedly unfair labor practice is justified by a legitimate business purpose, as discussed in note 8 of the United States Supreme Court decision in *N.L.R.B. v. Erie Resistor Corporation*, 373 U.S. 221, 230, (1963)¹² but whether the Board is entitled to infer from the indisputable facts as it did that Allied Chemical's actions were motivated by legitimate business purposes and not because of hostility to OCAW which already represents more than 2000 Allied Chemical employees.

12. Cited at pages 33 and 37 of Brief for Petitioner.

The Board's decision does not turn upon the credibility of witnesses, for an analysis of the testimony presented to the Board showed that there were no material differences in the facts as reported by the witnesses. As there was no dispute on any essential fact, the Trial Examiner avowedly placed his conclusions on inferences which the Union, now, erroneously asserts as findings of facts.

The Trial Examiner treated executives of Texas Gas as having been "hired" by Allied Chemical (TXD-4) though the record shows that they continued as officials of Texas Gas. (Co. ex. 41; Tr. 196, 659) His assumption that they were "hired" by Allied Chemical is based on the inference that the operating agreement was not really one making Texas Gas an independent contractor. The inference was rejected by the Board on cogent reasoning fully supported by the record.

From this basic erroneous inference and not from disputes of fact flow other inferences by the Trial Examiner. He inferred that the refinery was not purchased primarily for conversion to a petrochemical plant, (TXD-6) which even the Union does not now contend, and which the Board rejected by a specific finding that the refinery was bought to be converted to a petrochemical plant.

We find the argument of the Union in its brief on this phase of the case confusing. The Union finds itself obliged to agree that "Because the Company indisputably planned to convert the refinery into a petrochemical plant, it was not contended that the Company was a 'successor' to Texas Gas." (Brief for Petitioner, p. 41) from this the Union concludes that "The Company's only obligation was a negative one, *not* to discriminate against the refinery employees because of their union membership" (Brief for Petitioner, p. 41). The complaint, however, did not allege any discrimination in hiring employees after the shutdown and the General Counsel stated explicitly this was no part of his case. He said only

that the shutdown itself and termination of employees by Texas Gas was in fact the termination of the employees by Allied Chemical because of their union membership.

"MR. AVEDON: Our contention is that in the period from January 1, 1963 until February 14, 1963, that Texas Gas was operating the plant as *agent* for Union Texas Petroleum, or I think I will use Allied Chemical since that might be a simpler designation, since Allied Chemical owned the plant and actually Texas Gas was operating the plant, but really it was being operated by Allied Chemical. Allied Chemical was calling the shots. All of the decisions basically were being made by Allied Chemical officials." (Tr. 15)

* * *

"TRIAL EXAMINER: The other company, Texas Gas Corporation, is not before us?"

"MR. AVEDON: No, sir.

"TRIAL EXAMINER: Is there any contention or theory that it is involved, *other than as an agent during this period?*

"MR. AVEDON: No, sir.

"TRIAL EXAMINER: From January until February 14?

"MR. AVEDON: No, sir. We contend that Union Texas was actually operating the plant through its control and exercise of authority over employees of Texas Gas under the operating agreement." (Tr. 18).

"Trial Examiner: *Is there any theory apart from that that by virtue of the certification that the Respondent here is responsible to honor the certification and to honor the established unit or units within the framework of this complaint?*

Mr. Avedon: No, Sir. (Tr. 37) (Emphasis added.)

* * *

MR. AVEDON

"I don't make any contention that there were specific acts of individual discrimination in that certain employees were not hired after, by Union Texas Petroleum, after February 14, 1963. I think that what we are dealing with is a blanket charge of unlawful discrimination in that these employees were terminated by Union Texas, as we contend, on this date." (Tr. 221).

It would burden this brief immeasurably to take each inference which must flow from the *a priori* conclusion that the refinery was not purchased for conversion. In our brief to the Board we said "Bit by bit the Trial Examiner has added unwarranted inference to unwarranted inference. This thrusts upon us the duty to examine each one so the Board in reviewing them can see that the record refutes the whole and each of its parts." The Board's decision reflects its expertise in giving the proper weight and drawing the proper inferences from facts beyond dispute in a highly complex field of management-labor relations. The Board stated:

"The record herein clearly demonstrates, and we find, that the Respondent intended at all times to take over the Winnie plant, purchased from Texas Gas Corporation, in a shut-down condition. The record further demonstrates, and we find, that Respondent planned to convert all the existing production areas from a gasoline refinery to a plant producing petrochemicals. Although title to the plant passed to the Respondent on December 31, 1961, the plant was not actually shut down until February 14, 1962. It is evident from the record, however, that this passage of title was accomplished on December 31 solely as an accommodation to Texas for purposes unrelated to the matter here under consideration.

"The Respondent had not desired to take over the plant until sometime thereafter, inasmuch as its

conversion plans would not be completed by December 31." (D & O p. 2)

There is no dispute that none of the employees employed by Texas Gas had worked in a petrochemical plant.

There is no dispute that the employees whom Texas Gas employed in its maintenance department, 14 of whom were represented by Petitioner, and 13 by other unions, were too few in number to do the amount of needed work in any reasonable time and that Fluor used over 100 craftsmen to accomplish it. (Tr. 635)

There were items of fact of which use is now being made by Petitioner to synthesize a non-existing union animus. For example, Mr. Sutherland in the exercise of caution did bring to the refinery on closing day more people than he could use and brought in Pullman cars to house them (Tr. 132, 665), but they were sent back to other plants on the next day and the day following (Tr. 140, 665); the employees brought in were indeed non-union but neither they nor any union had asked for union representation at Union Texas plants (Tr. 71, 282, 284); the shutdown was not completed on February 14, but was completed as to refinery operations immediately thereafter. (Tr. 664-665) The actual work of conversion did not start immediately but could not be started until inspections were made and these inspections were started immediately after the shutdown and continued for sometime thereafter. Therefore, the plan of December 4, 1962 could not be followed, but Allied Chemical discovered this on December 18, 1962. (Tr. 454-476). Hence the independent contract and the delay in shutting down. (Tr. 276, 277, 476)

Petitioner has pointed to testimony out of context in an attempt to show hostility to the union. For example, Mr. Neville testified that Mr. Sutherland had told him in April:

"A. That all new applicants would be given a physical and a test. That would apply to everyone that is going to work for Union Texas Petroleum.

"Q. What else did he say?

"A. That would also be the boys, the union boys, that were laid off, and that that probably would eliminate a whole lot of them."

But the Trial Examiner himself, by his questions to Mr. Neville, showed that no union animus was involved in the decision to give tests:

"A. In our conversation at that time Mr. Sutherland said that he thought that this test would eliminate *some people*.

"TRIAL EXAMINER: Is that the substance of his statement? Did he use the term '*some people*'?"

"THE WITNESS: Yes, actually, Mr. Sutherland and I were talking about it, and discussing this, and I, as well as he, *figured it would eliminate people that couldn't pass the test.*" (Tr. 191) (Emphasis added.)

Again, Mr. Neville said Mr. Sutherland had told him there were no unions at other division plants. (Tr. 147) This is true. But if anyone could have gained the inference that the absence of unions at other plants and tests to be given applicants at this refinery were related, counsel for the Union nullified that in this way:

"Q. Now my question is did he make these two comments about eliminating people and about no union at other plants in the same conversation or in different conversations?

"A. Different conversations." (Tr. 192) (Emphasis added)

The Board accepted Mr. Howard Marshall's testimony that Texas Gas had insisted on closing the transaction on December 31, 1962 for tax reasons. Now, the Union admits this in its brief, but the Trial Examiner had said that Mr. Marshall's undisputed testimony "is patently in conflict with all other evidence," (TXD, Page 9, Lines 30-40), which illustrates the validity of the rule that the Board cannot be bound by the conjectures of its Trial Examiner.

Again, the Board accepted Mr. Marshall's testimony that the plant was purchased to be converted for use in the petrochemical industry. Now, the Union admits this also in its brief. But the Trial Examiner again on conjecture rejected this position and said the purchase was "principally to provide entry into the natural gas market in the Eastern Texas Area." (TXD page 6, lines 18-23). The Trial Examiner's mention of petrochemicals was last and apparently to him of least notice. Again, the Court can see the need for the Board's freedom in drawing its own inferences from indisputable facts.

The Board is not bound by its Trial Examiner and the Board has fully met the requirements of *Universal Camera Corporation v. N. L. R. B.*, 340 U.S. 474 (1951) on the issues presented by the complaint which the General Counsel had the right to choose.

In *Cheney California Lumber Company vs. N. L. R. B.*, 319 F. 2d 375, 377, the Court said:

"The sole credibility finding of the trial examiner was in favor of a Union witness, and was not disturbed in any way by the Board. It also accepted all of the examiner's findings on the basic facts. In these circumstances, the examiner's conclusions, although they differ from the Board's, are not entitled to special weight. The Board was free to draw its own conclusions, turning as they did on matters other than credibility."

It is submitted that the record supports each and every finding and conclusion of the Board and under Sections 10 (e) and (f) of the Act "the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." See *Universal Camera Corp. vs. N. L. R. B.* 340 U. S. 474 (1951).

III

THE BOARD IS NOT REQUIRED TO DETAIL ITS FINDINGS IN ORDER TO FULFILL ITS REVIEWING FUNCTION BUT MAY PHRASE ITS OPINIONS IN CONCLUSORY TERMS

The Board properly performed its review function. In seeking a remand, the Union relies upon *Retail Store Employees vs. N. L. R. B.* decided by this Court on July 13, 1965 App. D.C.; 348 F.2d 369. No just comparison can be made between that case and the present case. In the cited case there was the bare recital that the Board did not believe an unlawful conspiracy had been shown.

The Court stated:

"Where substantial evidence on the whole record supports the findings of a trial examiner a summary approval of his findings by the Board is no doubt sufficient; and it is often sufficient where his findings are not approved, as in this case, for the Board to find the preponderance of evidence supports different findings. But here the Board had done no more than simply state its belief that the facts and circumstances relied upon by the trial examiner do not on the record as a whole support the conspiracy finding.

"In a case involving possible collusion, the trial examiner's ultimate finding naturally is drawn by inference from other findings based upon the evidence.

The Board's inference should also rest upon some findings."

* * * *

"... We find nothing in the decision of the Board concerning preponderance of evidence, failure to sustain a burden of proof, or Board acceptance of the basic facts found by the trial examiner, with a different inference drawn therefrom. What we have is a Board statement of disbelief that the facts and circumstances relied upon by the trial examiner on the record as a whole support a conspiracy finding."

In the present case, there is a finding by the Board of essential facts as quoted above, most of which are admitted by the Union. Here there is a specific finding by the Board with respect to the failure to meet the burden of proof, and there is a clear statement by the Board that it drew different inferences from the established facts.

More appropriate is *Steelworkers Local 4203 vs. N.L.R.B.*, 111 App. D.C. 60; 294 F. 2d 256; 48 LRRM 2116. The dispute concerned the plans of a company to make multi-million dollar additions to its plant through independent contractors and the claim of the union for this work. Picketing followed. The complaint against the union was decided in favor of the union by a Board trial examiner and the Board reversed. There the decision of the Board was brief.

The Court reviewed the basic facts and said:

"From the foregoing basic facts, the Board inferred as an ultimate fact that an object of the Union's successful inducement of the employees of the sub-contractors to stop work was to force the sub-contractors and the contractors to cease doing business with the Company"

"We are of the opinion that the inferences of fact drawn by the Board from the basic facts were reasonable and rational inferences. And we are of further opinion that the conclusions of the Board were rational and reasonable conclusions from those facts. Since we are of these opinions, our function is at an end."

* * * *

"The Board's decisions are frequently phrased in conclusory terms, such as 'primary' and 'immediate' objectives and 'direct' and 'foreseeable' effects. These words must be understood as expressing ultimate findings of fact, inferences drawn from evidence in the record. This is the step in the decisional process that immediately precedes the drawing of conclusions of law. But these terms must not be allowed to crystallize into doctrinaire labels to be used to squeeze problems into fixed slots. They are adjectives of inference from basic facts as these facts appear in a record. The real legal significances of these ultimate findings or inferences and the consequent conclusions lies in the basic facts from which they spring. This is the test we apply in the case before us. Thus tested, we think as we have indicated, the conclusions are reasonable upon the record."

IV

IN REVIEWING THE PETITION THIS COURT NEED MERELY DETERMINE WHETHER SUBSTANTIAL EVIDENCE ON THE RECORD CONSIDERED AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT INTERVENOR HAD NO OBLIGATION TO BARGAIN WITH PETITIONER AND ACCORDINGLY INTERVENOR DID NOT VIOLATE SECTIONS 8(a)(1), (3) AND (5) OF THE ACT.

In analyzing the function of a circuit court in determining whether to enforce an order of the Board, this Court stated in *Joy Silk Mills v. N.L.R.B.*, 87 App. D.C. 360; 185 F.2d 732, Cert. Denied 341 U.S. 914:

"... The test now is whether there is 'substantial evidence on the record considered as a whole', and it is that test which we shall apply to the best of our ability and understanding."

In the same decision this Court stated that when the Board and its Trial Examiner disagree:

"... the evidence must be examined with greater care than when both the Board and the trial examiner are in complete agreement. But this does not mean that any greater amount of evidence is required to support the Board's determination. The Board is authorized to make findings contrary to the findings of the trial examiner, and where there is substantial evidence to support the Board's findings, the court may not set them aside merely because the Board's view of the weight and credibility of the witnesses differed from that of the trial examiner. *N.L.R.B. v. Laister-Kauffman Aircraft Corp.*, 8 Cir., 144 F.2d 9, 16-17."

Accord: International Union of United Brewery, Etc. v. N.L.R.B., 111 App. D.C. 383; 298 F.2d 297, 299; *International Union of Electrical, Etc. v. N.L.R.B.*, 273 F.2d 243, 247 (3rd Cir.); *N.L.R.B. v. Everett Van Kleeck*, 189 F.2d 516, 517. (2nd Cir.)

It is our contention that the record when considered as a whole supports each and every finding and conclusion of the Board.

Even though the evidence in this case should be examined with greater care because the Board and its Trial Examiner have disagreed as to certain findings of fact, it will be recognized that this is unlike the case where the trial examiner relies on creditibility and demeanor of a witness to arrive at a conclusion. Credibility is not an issue in this case and the Board did not rely on findings of creditibility in reaching its decision nor question such findings by the

trial examiner. This is similar to the situation confronting the Third Circuit in *International Union of Electrical, Radio and Machine Workers v. N.L.R.B.*, supra, 247, where that Court stated:

"It should be noted, however, that the Board here did not question the credibility rulings made by the trial examiner but rather adopted them. True, it did differ as to the conclusion to be drawn from the evidentiary facts, but this is its province. Thus, this case is akin to *National Labor Relations Board v. Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135*, 7 Cir., 1954, 212 F.2d 216 (C.A. 7, 1954), where it was held that in disagreements between the Board and the trial examiner as to conclusions, it is of little, if any, consequence that the trial examiner was in a better position than the Board to evaluate the testimony of witnesses."

We recognize that the Court is entitled to take into account contradictory evidence or evidence from which conflicting inferences could be drawn in determining whether, on the whole, there is substantial evidence to support the findings of the Board. *Universal Camera Corp. v. N.L.R.B.*, (1951) 340 U.S. 474. The Supreme Court said in that case:

"The 'substantial evidence' standard is not modified in any way when the Board and its examiner disagree."

This Court reviewed much of this phase of the law in *Warehousemen and Mail Order Emp. Local No. 743 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. N.L.R.B.*, 112 App. D.C. 280; 302 F.2d 865, 866, 869. The Trial Examiner had found the company violated the Act. The Board disagreed and dismissed the complaint. The union petitioned for review. In pertinent part, this Court said:

"(1) The Trial Examiner found against the Company, but the full Board unanimously concluded otherwise, largely placing its own interpretation upon and drawing different conclusions from the facts. Under section 10(f) of the Act, 29 U.S.C.A. § 160(f), the findings of the Board are conclusive if supported by substantial evidence on the record considered as a whole. The responsibility for decision rests primarily upon the Board, to be sure. But after according to its findings that respect which the Boards' expertness requires we are free to reverse if we 'cannot conscientiously' find its decision to be supported by substantial evidence of record viewed in its entirety. An appraisal of the record so to be considered, devolves upon this court.

"The law has not committed the decisional process to the Trial Examiner. Administration of the Act has been reposed in the Board. Here was no issue of credibility, for the facts are largely undisputed.

"We conclude that it was open to the Board on the entire record here to decide that the Company had not bargained in bad faith. It follows that the Decision and Order of the Board must be affirmed."

In *N.L.R.B. v. Tru-Line Metal Products Company*, 324 F.2d 614 the Sixth Circuit said:

"The Board overruled the trial examiner, who had dismissed the complaint on the basis that there were no violations of the Act. The Board did not disagree with the findings of fact, but rather drew different inferences from the facts as found by the examiner. This of course the Board was free to do. *N.L.R.B. v. Wooster Division of Borg-Warner Corp.*, 236 F.2d 898, 907 (C.A. 6). When the trial examiner and the Board disagree, this Court will examine the evidence with greater care. *Burke Golf Equipment Co. v. N.L.R.B.*, 284 F.2d 943, 944 (C.A. 6); *Amalgamated Meat Cutters, etc. v. N.L.R.B.*, 276 F.2d 34, 36 (C.A.

1). The standard however continues to be whether substantial evidence supports the findings of the Board. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 496, 71 S. Ct. 456, 95 L. Ed. 456; *Amalgamated Meat Cutters, etc. v. N.L.R.B.*, *supra*."

In the more recent case of *Metal Processors' Union Local No. 16, AFL-CIO v. N.L.R.B.* 119 App. D.C. 78; 337 F.2d 114, the Court refused to set aside an order of the Board dismissing a complaint. In that case, too, the Board disagreed with some of the conclusions of its examiner. Among other points, it was noted:

"The Union argues further that the Board erred in rejecting certain evidence which, it is said, established general Company hostility toward the Union, from which, in turn, it may be inferred that Zajac's discharge was discriminatory. With this we cannot agree. Even if it were assumed *arguendo* that the evidence referred to did establish general Company animosity toward the Union, it would be insufficient in itself to ground the inference that Zajac's discharge was violative of the Act." (page 117)

After further review, the Court said:

"We are of the opinion, therefore, that on the entire record there is substantial evidence supporting the Board's order dismissing the complaint. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 71 S.Ct. 456, 95 L. Ed. 456 (1950). Accordingly the petition to set aside the Board's order is denied." 337 F. 2d 119

In *N.L.R.B. v. Park Edge Sheridan Meats, Inc.*, 341 F.2d 725, (2nd Cir.) the examiner had found for the employer and the Board disagreed. Although upon analysis of the evidence, the Court agreed with the examiner and denied enforcement, the Court said in pertinent part "While only the trial examiner can fully evaluate credibility, the Board is fully as capable of weighing the other inferences and the statute "is wholly

inconsistent with the notion that it (the Board) has the power to reverse an examiner's findings only when they are clearly erroneous'."

Finally, in *N.L.R.B. v. Stanton Enterprises, Inc.*, 351 F.2d 261, (4th Cir.) Judge Sobeloff noted that the trial examiner had found in favor of the Company and the Board had reversed on question of motivation and said:

"As it is the Board's decision and not the examiner's which we review, it is sufficient if there is substantial supporting evidence for the Board's conclusion, even if it conflicts with that of the examiner. *Universal Camera, supra*; *NLRB v. Southland Cork Co.*, 342 F.2d 702, 708 (4th Cir. 1965); *Daniel Construction Company, supra*, 341 F. 2d at p. 813, n."

CONCLUSION

It is respectfully submitted that the petition to review should be denied because the record considered as a whole supports the findings of the Board that:

(1) Texas Gas was an independent contractor and that it was not dominated or controlled by Allied Chemical;

(2) Allied Chemical was motivated by valid business reasons and not by hostility to the Union and did not violate the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

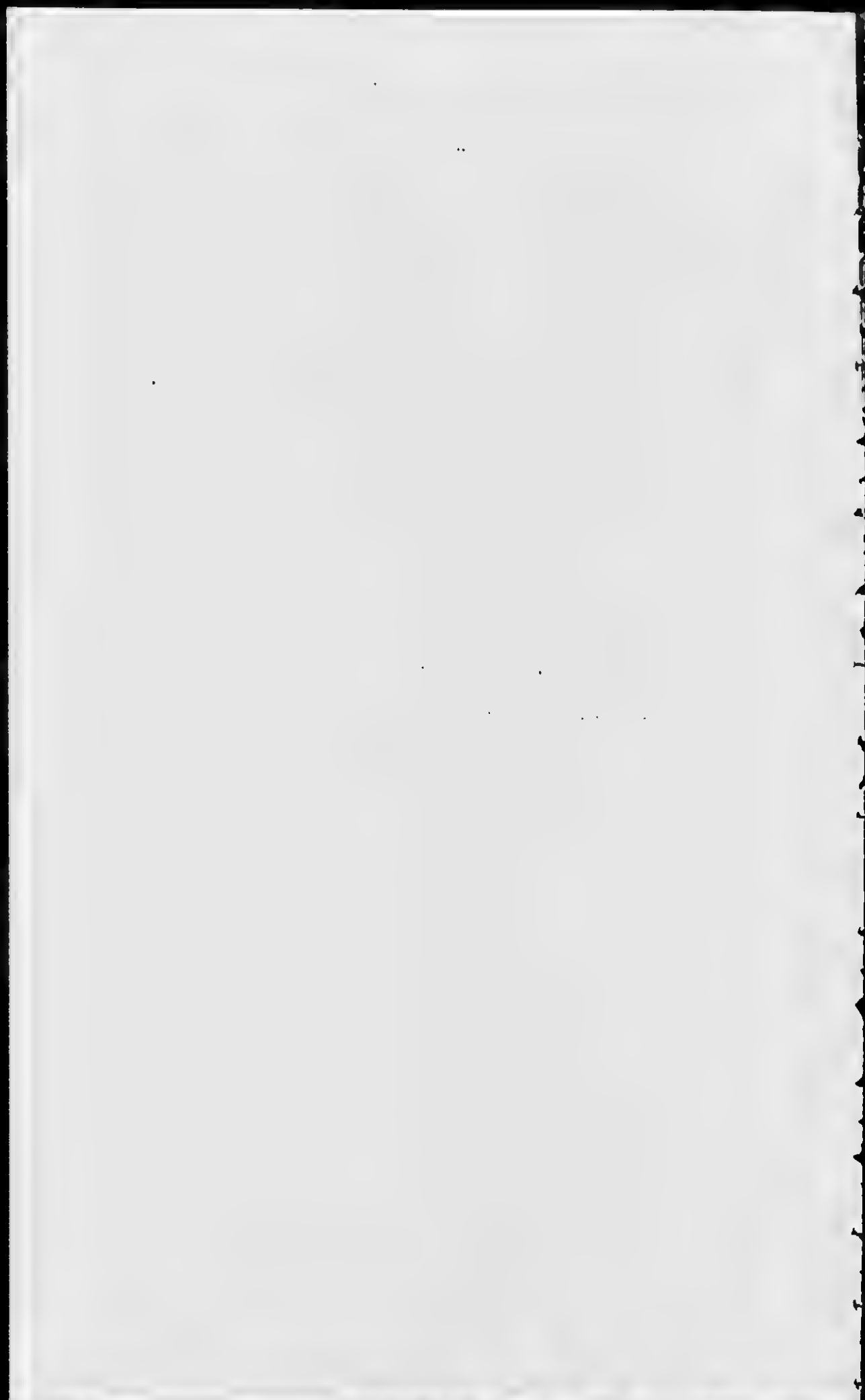
I certify that copies of this brief have been mailed with sufficient postage prepaid this February 2, 1966, to Chris Dixie, Esq. and Marion C. Ladwig, Esq., 505 Scanlan Bldg., Houston, Texas, and to Mozart G. Ratner, Esq., 818 Eighteenth St. N.W., Washington, D.C., attorneys for Petitioner, and to Arnold Ordman, Esq., Dominick L. Manoli, Esq., Marcel Mallet-Prevost, Esq., Melvin Pollack, Esq., and Marcus W. Sisk, Esq., National Labor Relations Board, Washington 25, D.C., Attorneys for Respondent.

Baton Rouge, La., February 2, 1966.

Victor A. Sachse

For Intervenor

**INTERVENOR'S
SUPPLEMENTAL JOINT APPENDIX**



Stenographic Transcript of Hearing

TRIAL EXAMINER

Lines 11-13

452

"... I have frankly seen very little, and again, the record has to be studied, but there is very little here, if anything at all, on union animus . . ."

ECKHOLM

Lines 22-24

494

"It is the intent of this exhibit, R-7, to show what we plan to do with the xylene stream as it will be produced in new petrochemical facilities at Winnie."

Lines 2-17

499

"MR. AVEDON: I realize that, but my understanding from R-5 was the normal paraffin separator had already been authorized and was approved. Am I misinterpreting?"

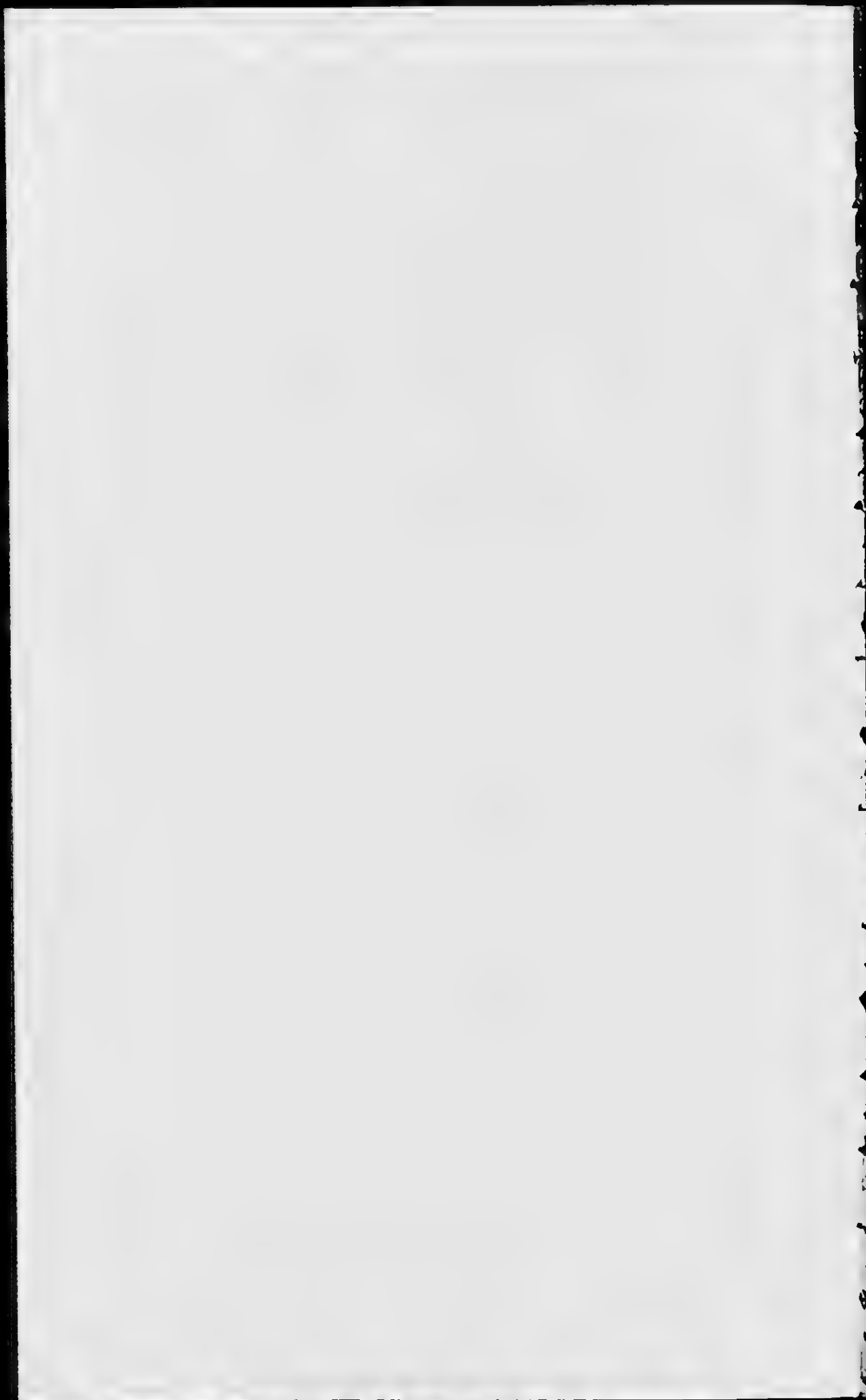
"THE WITNESS: No, you are not misinterpreting. The intent of R-8, which once again was prepared last September, and at which time they were evaluated in only the most cursory fashion, the intention in presenting for your consideration R-8 is to show you that these are not just daydreams, but that we are proceeding apace with them to the extent that we can witness the difference in the status of the projects just over the period of six months.

"TRIAL EXAMINER: It certainly represents, I take it, concrete planning, engineering programming.

"THE WITNESS: Yes, sir.

"MR. SACHSE: That's correct, sir.

"MR. AVEDON: I will withdraw my objection."



GENERAL COUNSEL'S EXHIBIT 1-C

CHARGE AGAINST EMPLOYER

**FILED MARCH 8, 1963
ON N.L.R.B. FORM 501**

**ATTACHMENT TO FORMAL
CHARGE**

ATTACHMENT "A"

Names of Employers:

- (1) Union Texas Petroleum, a Division of Allied Chemical Corporation;
- (2) Texas Gas Corporation;
- (3) Pan American Petroleum Corporation;
- (4) Carl M. Lech Rhoades & Co.

Addresses of Employers:

- (1) 811 Rusk, Houston 3, Texas;
- (2) 2472 Bolsover Road, Houston 5, Texas;
- (3) 500 Jefferson Building, Houston 2, Texas;
- (4) 42 Wall Street, New York, New York.

ATTACHMENT "B"

Basis of the Charge:

On or about January 11, 1963, and thereafter, Employer (1), herein called Union Texas:

(a) has refused to bargain collectively with Oil, Chemical and Atomic Workers International Union, AFL-CIO, and its Local Union No. 4-243, herein called the Union, as bargaining representative of Union Texas' employees at its Winnie, Texas, plant, in the certified bargaining unit:

(b) has, for purposes of undermining the Union, avoiding obligations under the collective bargaining agreement, and intimidating the employees in the bargaining unit into refraining from union activities, threatened to replace the employees with Union Texas employees from other States, thereby threatening to discriminately replaced experienced union employees with non-union out-of-state employees whenever they can be trained;

(c) has, after shutting down the plant and terminating the employees on February 14, 1963, pursuant to such threat, refused to bargain with the Union concerning the necessity of the shutdown, the assignment of work to the terminated employees during the shutdown, and their wages, hours, and working conditions; and

(d) has contracted out the plant maintenance work, as well as new construction and other work, and has replaced terminated employees with other workmen, without bargaining with the Union concerning such matters — all in violation of Section S(a)(1) and (5) of the Act.

Employer (2), herein called Texas Gas, and majority owners of its stock, Employees (3) and (4), herein called Pan Am and Loub Rhoades, respectively:

(a) on and after July 17, 1962, failed and/or refused to bargain collectively with the Union as representative of Texas Gas' employee about a decision to sell the Texas Gas plant and other properties;

(b) on or about December 18, 1962, and thereafter, refused to bargain collectively with the Union about the inclusion of provisions in any sales contract to project the jobs and seniority of Texas Gas' employees and to make any sales contract subject to the union agreement; and

(c) on or about January 3, 1963, and thereafter, refused to bargain collectively with the Union by refusing to produce, or furnish a copy of, the Purchase Agreement for the Texas Gas properties; and the Operating Agreement, to the Union—all in violation of Section 8(a)(6) and (1) of the Act.

On or about December 1, 1962, and thereafter, Union Texas, Texas Gas, Pan Am, and Loeb Rhoades interfered with, restrained, and coerce demployees in the exercise of the rights guaranteed in Section 7, and refused to bargain collectively with the Union, by:

(a) Texas Gas, Pan Am, and Loeb Rhoades plotting to sell Texas Gas plant and other properties to Union Texas as a non-union operation, and

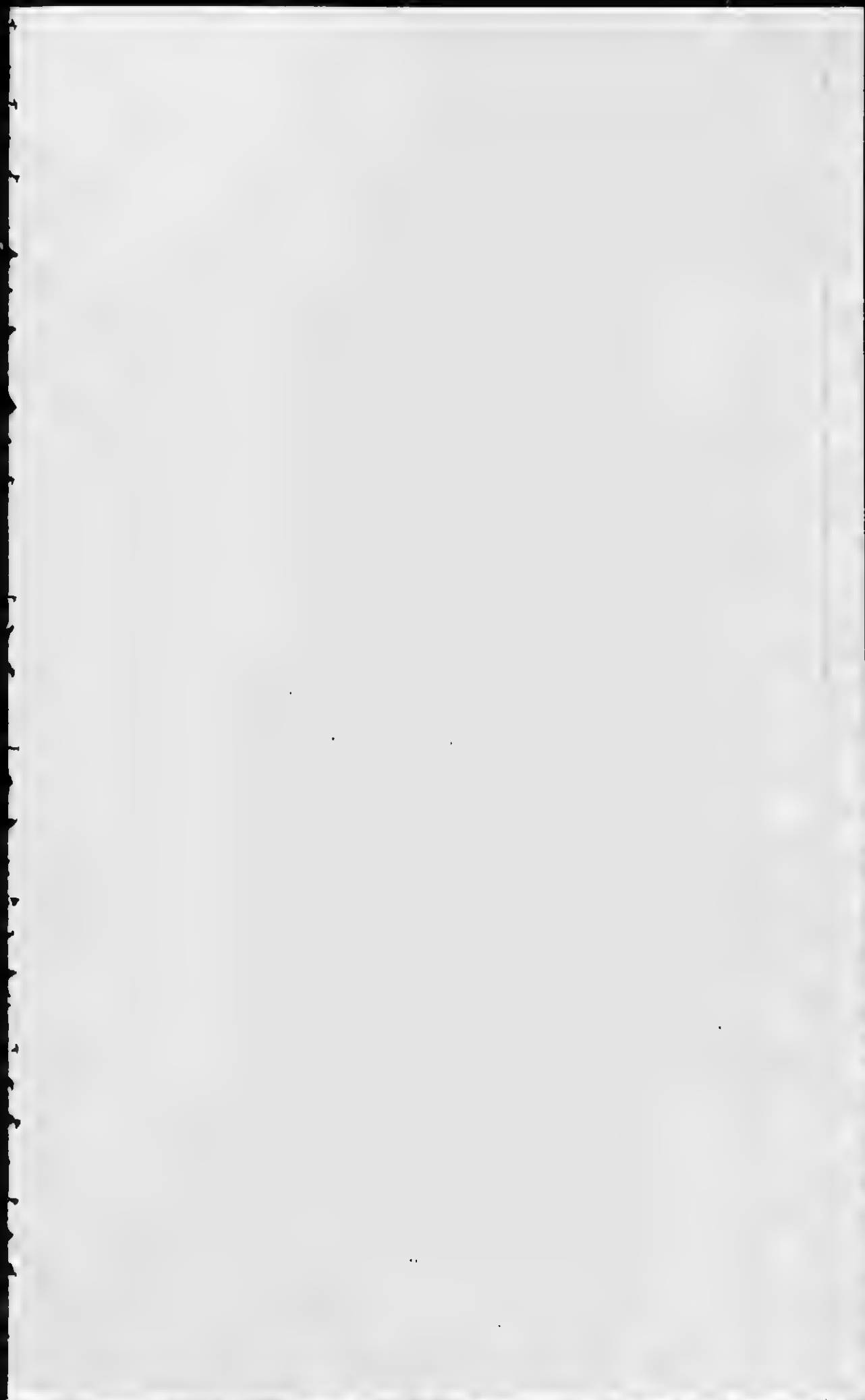
(b) by Texas Gas, in conspiracy with Pan Am and Loeb Rhoades through their attorney Karl Mueller, making with Union Texas (without bargaining with the Union) a temporary operations agreement between Union Texas and Texas Gas, whereby Texas Gas (a dissolving corporation) would hold itself out as "employer" of the bargaining unit employees from the effective date of the sale, January 1, 1963, for a purpose of providing Union Texas more time to discriminatorily replace the union employees with non-union employees and/or a purpose of concealing Union Texas' status, on and after January 1, 1963, as employer of the bargaining unit employees represented by the Union — all in violation of Section 8(a)(1) and (5) of the Act. In the foregoing conduct Union Texas, Texas Gas, Pan Am, and Loeb Rhoades acted in a conscious concert of action with each other and as agents of each other, directly or indirectly, to accomplish and execute, and they did execute, the foregoing violations.

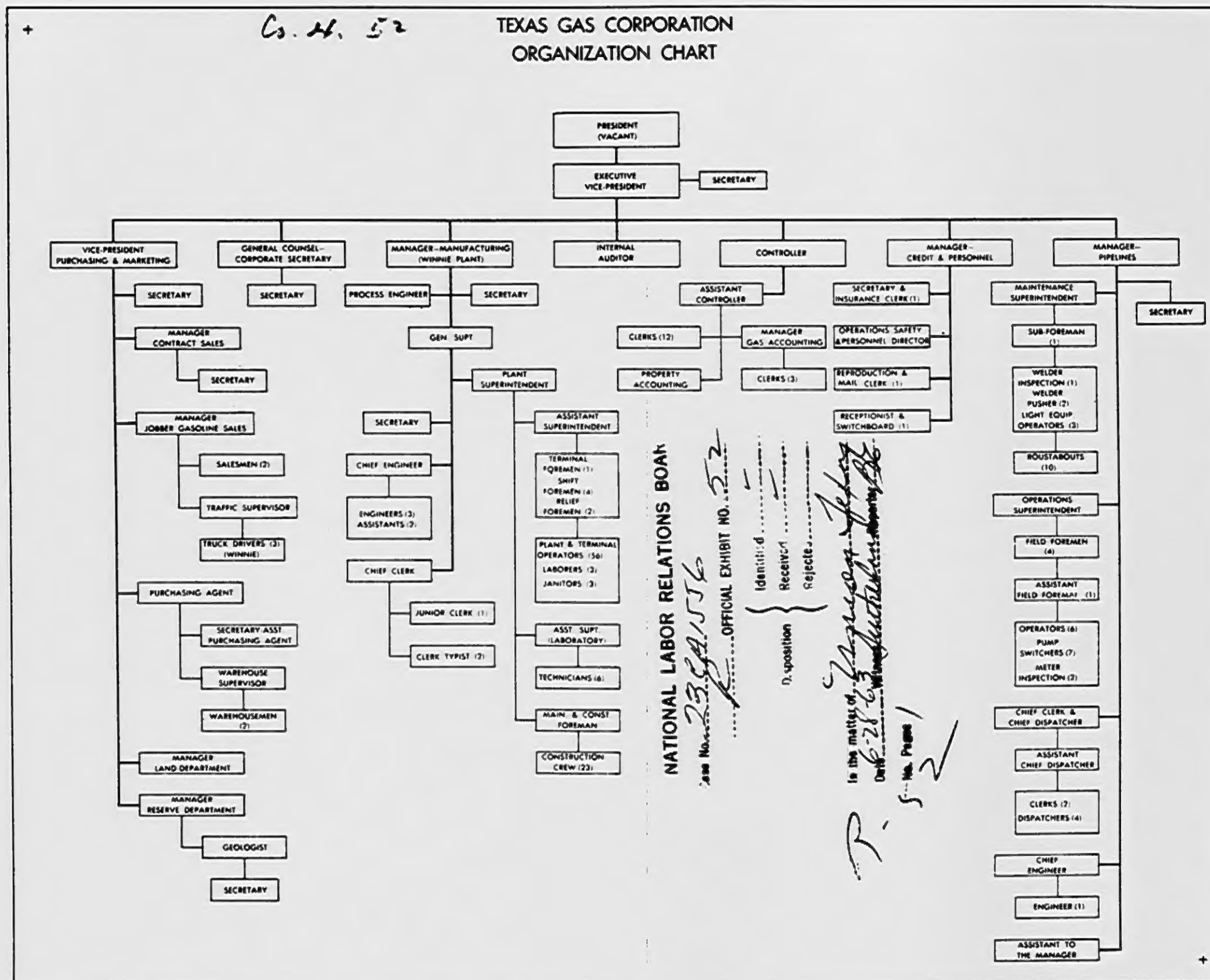
On or about February 14, 1963, Union Texas discriminatorily terminated the following named employees in order to rid the plant of employees represented by the Union, and at

all times since such date, Union Texas has refused and does now refuse to employ them, in violation of Section 8(a)(3):

(Names omitted in copy)

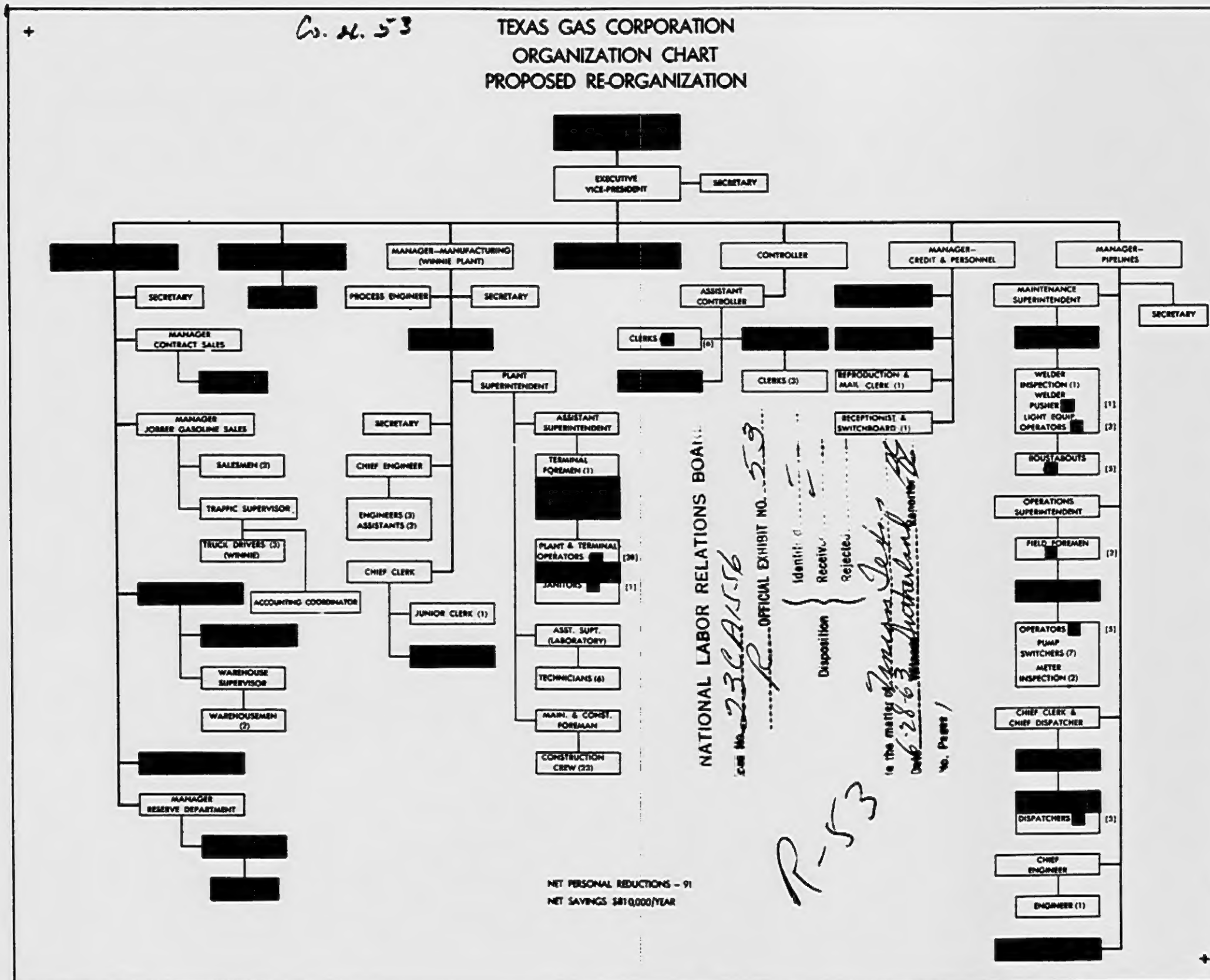
By the acts set forth in the paragraph above, and by other acts and conduct, Union Texas, Texas Gas, Pan Am, and Loeb Rhoades interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.





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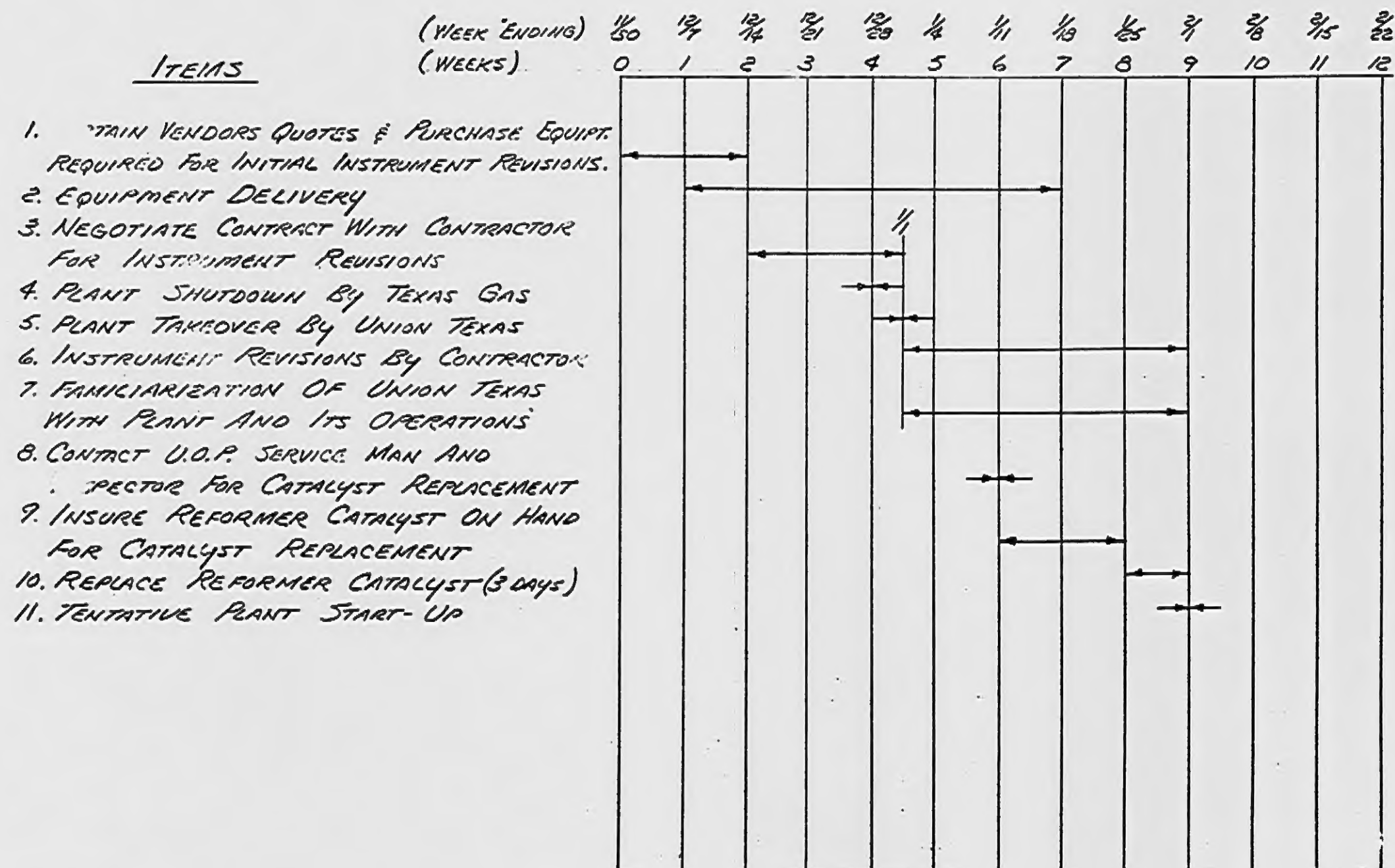
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Co. ex. 66 (page 6)
OPERATIONS & TECHNICAL SERVICES

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PLANT SHUTDOWN SCHEDULE

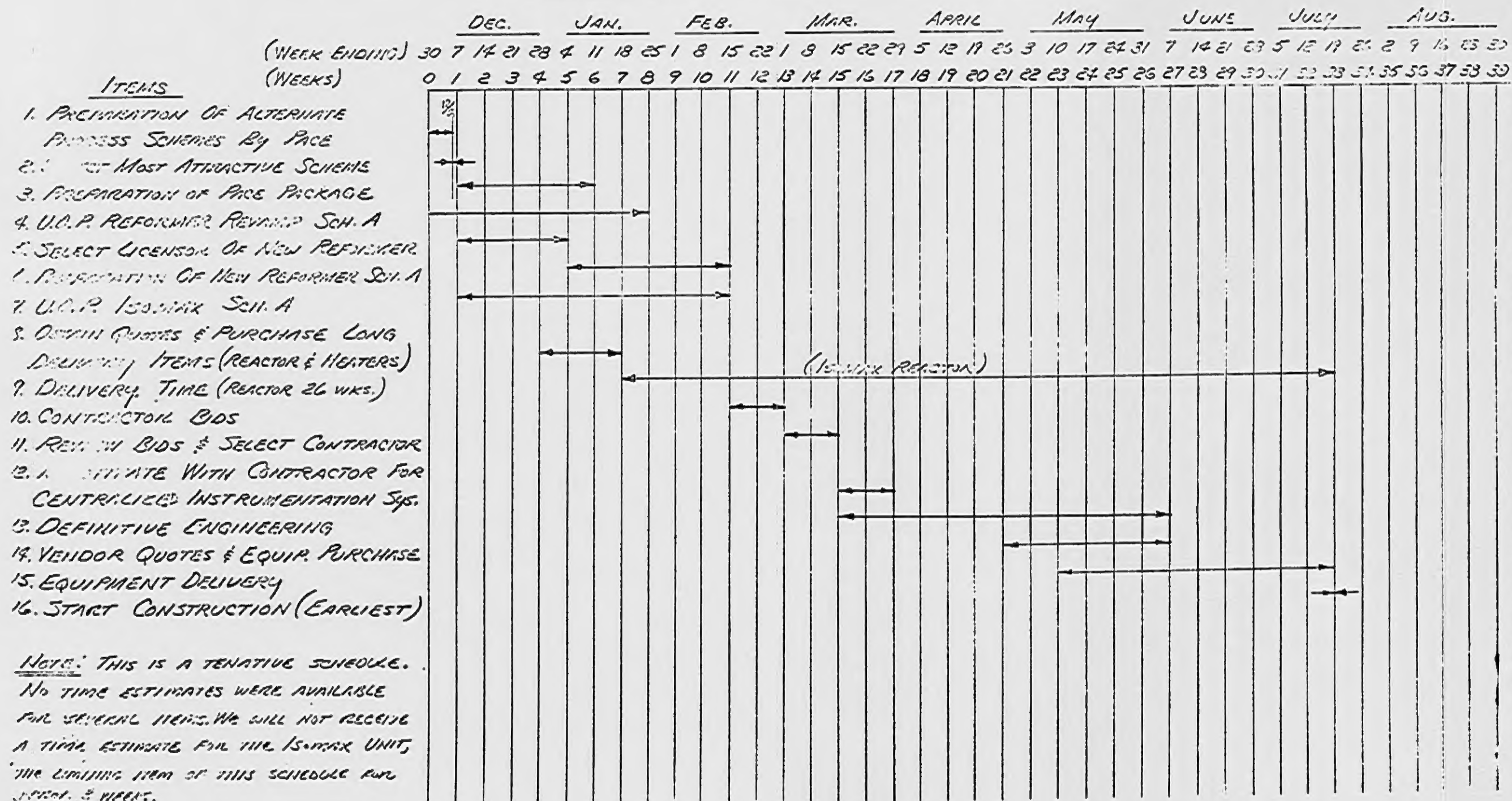


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OPERATIONS & TECHNICAL SERVICES
(TENTATIVE)
ONE STAGE PLANT EXPANSION SCHEDULE

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